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THE

MISCELLANEOUS ESSAYS

AND

OCCASIONAL WRITINGS

OF

FRANCIS HOPKINSON, Esq.

VOLUME III.

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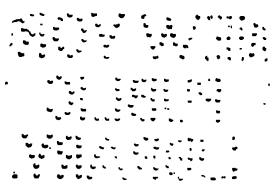

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JUDGMENTS IN THE ADMIRALTY

OF

PENNSYLVANIA.

[A. D. 1779.]

TUCKER, QUI TAM

verſus

THE SHIP POLE.

THE ſhip Pole ſailed from Liverpool, in England, with a cargo of goods for the city of New York in America, then in the poſſeſſion of the Britiſh troops, under a commiſſion of letters of marque and repriſal againſt the ſubjects of the United States; and with orders from her owners to cruize againſt the Americans in her voyage,

being properly armed for that purpoſe. After the delivery of her cargo at New York, ſhe was to ſail for Jamaica, take in a lading of rum and ſugars, and then return to Liverpool.

SUCH was the plan of the voyage; ſubjected, however, to the diſcretion of an agent at New York, who had power to alter it if he ſhould think proper.

AFTER the ſhip had delivered her cargo at New York, the agent ordered her to cruize on the American coaſt for four months, and ſhipped hands on board her for the purpoſe, as *privateer's-men*, which appeared by an endorſement on the ſhip's articles. She had alſo a let-paſs on board, ſigned by the ſenior naval officer at New York, ſtiling her a privateer.

UNDER theſe circumſtances the *Pole* ſailed from New York, and was captured by Tucker, in a frigate belonging to the United States, and libelled againſt in the admiralty of Pennſylvania as prize: whereupon a claim was filed in behalf of the United States for one half of the value, under an ordinance of congreſs, paſſed October 30th 1776, which gives the whole of veſſels of war taken by the ſhips of the United States to the captors, but reſerves

ſerves one half of merchantmen ſo taken, to the ſtates.

THE only queſtion was, whether the ſhip *Pole*, at the time of her being captured, ſhould be conſidered as an armed merchantman, or a privateer belonging to the enemy.

VERDICT in favour of the captors for the whole.

TUCKER, QUI TAM

verſus

THE SLOOP WILLIAM.

THE ſloop William, captain Aſhburner, was the property of John Wallace, an inhabitant of the iſland of St. Croix, and a ſubject of the king of Denmark. She took in a part of her lading at St. Croix, and cleared out at the cuſtom-houſe there for the port of Philadelphia. From St.

Croix ſhe went to Tortola, a Britiſh iſland, where ſhe took in the remainder of her cargo, which, by the teſtimony, appeared to have been ſent after her in a droger from St. Croix. At Tortola, captain Aſhburner, who was part owner of the cargo, cleared out at the cuſtom-houſe there for New York, then in poſſeſſion of the Britiſh troops.

With theſe double clearances, ſhe arrived on the American coaſt, where captain Tucker diſcovered, purſued, and boarded her under Britiſh colours. Aſhburner miſtaking Tucker for a Britiſh officer, exhibited his Tortola papers, and alledged that he was bound for New York, whereupon Tucker took the ſloop as prize, brought her to Philadelphia, and libelled againſt her in the admiralty as prize; at the ſame time a claim was filed in behalf of Wallace and Aſhburner, the owners.

On the trial, it was urged, in favour of the claimants, that this veſſel and cargo were wholly Daniſh property, and that, notwithſtanding the Tortola clearance, the ſloop was in fact bound for Philadelphia, which clearance was only intended as a cover from Britiſh capture. In proof of this, many letters were exhibited, found on board, to ſundry merchants of the United States. In particular, one to John Willcox of Philadelphia, containing

taining invoices of the cargo, and conſigning the whole to him, informing him alſo that the veſſel was covered with a Britiſh clearance.

It was further ſhewn, that from the courſe of the wind, and the direction in which ſhe was ſailing at the time ſhe was diſcovered, the probability was, that ſhe intended for the Delaware.

Verdict for the claimants.

N. B. This was previous to the ordinance of congreſs making double papers condemnation.

BOYD AND CARTER

verſus

THE SCHOONER JEMIMA.

THE ſchooner Jemima, belonging to Robert Bridges of Philadelphia, was taken by the Britiſh

as ſhe lay aground in a creek near to Bordentown, in New Jerſey, who ſtripped her, and then ſet her on fire. The libellants claimed ſalvage, for that they, at conſiderable riſk (the enemy beyet in ſight) went on board, extinguiſhed the fire, and ſaved the veſſel.

Verdict, in favonr of the libellants, for one-half of the value of the ſchooner.

HOUSTON

verſus

The Brig CHARMING NANCY.

THE brig charming Nancy, belonging to Purviance, and others, ſubjects of the United States, was on her voyage from Senepuxent to Philadelphia, when ſhe was diſcovered near the Capes of Delaware by Houſton, in a Philadelphia privateer, then out at ſea. Houſton hoiſted Britiſh colours,

colours, and endeavoured to come up with her: whereupon, M'Kenzie, captain of the Charming Nancy, taking Houſton for an enemy, endeavoured to run his veſſel on ſhore; but being unable to effect this in time, he, with the whole of his crew, took to their boat, and rowed to land, not leaving a ſoul on board the brig. M'Kenzie ſoon after diſcovered his miſtake, went on board his veſſel again with his mariners, and brought her up to Philadelphia. And now Houſton libelled for ſalvage, as having found the veſſel abandoned on the high ſeas, and ſaved her to her owners.

But as the abandomment was occaſioned by the libellant's own act, the bill was diſmiſſed.

Verdict, that the brig be reſtored wholly to her owners.

HALESKAMP,

verſus

THE SWIFT'S BOAT, AND THREE NEGROES.

THE *Swift*, a Britiſh ſloop of war, chaſed the *Rattleſnake*, an American privateer, till, in the heat of the action and chaſe, both veſſels ran aſhore on the coaſt of Virginia, and ſtranded: the captain of the Swift then ſurrendered to the Rattleſnake. The negroes in queſtion were taken on board the Swift. M'Cullough, commander of the Rattleſnake, took poſſeſſion of his prize, and employed the negroes for ſome time in ſaving goods from both wrecks: but the negroes, watching a favourable opportunity, took the Swift's boat and went off, intending for New York. Haleſkamp ſaw them from the ſhore, purſued, and took them, and now libelled againſt the boat and negroes as his prize.

AND it was urged, in behalf of the libellant, that the property, not having been condemned in a court

a court of admiralty, veſted with M'Cullough only as a poſſeſſory right, which ceaſed the moment an eſcape could be effected, and therefore the libellant ought to be conſidered as an original captor.

BUT the judge was of opinion, that M'Cullough had by the capture acquired a right, *ſub judice*, which could not be injured by a fellow ſubject, and which a court of juſtice alone could confirm or invalidate: that if Haleſkamp had libelled for ſalvage only, it had been good; but not as prize.

VERDICT—that the libel be diſmiſſed.

YOUNG,

verſus

THE SLOOP HAERLEM.

SHAW, and others, of the city of New York, ſubjects of the United States, were owners of the privateer

privateer ſloop Harlequin (now called the Haerlem.) In September 1776, the Britiſh then invading New York, this ſloop was, by order of *General Waſhington*, ſtationed in Haerlem river to defend that paſs, and prevent the enemy's boats from going up the river. On the retreat of *General Waſhington* with his troops, the owners not being able to get their veſſel out to ſea, on account of the enemy, had her ſcuttled and ſunk in Haerlem river, where ſhe was ſtationed, and then fled. The Britiſh troops took poſſeſſion of New York, and afterwards, by order of admiral Howe, this veſſel was raiſed, was called the Haerlem, and fitted out as a cruiſer in the Britiſh ſervice. After cruiſing three years againſt the Americans, and taking many prizes, ſhe was at laſt captured by the libellants. Whereupon the former owners claimed her as their property; offering to pay one half of her value for ſalvage, as having been more than 96 hours in the enemy's poſſeſſion, when ſhe was re-captured: alledging, that their property had not entirely diveſted; becauſe there was no proof that ſhe had ever been condemned as prize in the Britiſh court of admiralty.

But although there was indeed no direct proof of ſuch condemnation, yet the length of time ſhe

was

was in the ſervice of the enemy, together with the general tendency of the teſtimony produced, gave a ſtrong preſumption that ſhe had been ſo condemned, and therefore the jury found a

Verdict in favour of the libellants.

GAMBLE

verſus

The Sloop TERRIBLE.

Claim, by John Oſman, *for five hogſheads of rum, and a ſhare of the prize.*

OSMAN was a priſoner in Jamaica, where alſo he had money due to him. With this money he purchaſed five hogſheads of rum. He was then, with other priſoners of war, put on board this ſloop, which was Britiſh property, to be conveyed to New York, and was permitted to take his five hogſheads

hogſheads of rum along with him on his own account. The priſoners roſe at ſea upon the captain and crew, took poſſeſſion of the ſloop, and brought her into the port of Philadelphia. *Oſman* was privy to the deſign, but unable to aſſiſt perſonally in the capture, being confined in bed by his wounds.

Verdict, that the ſloop be condemned as prize, and that *Oſman* have his five hogſheads of rum, together with a diſtributive ſhare of the prize.

FALLIAGE, & ALI.

verſus

THE SCHOONER HOPE.

Mollineaux, & ali. Claimants.

MOLLINEAUX, *and others*, Frenchmen, were owners of the ſchooner Hope, which was captured

captured by a Britiſh privateer in her voyage from Maryland to France. Falliage, and others, the former crew, but now priſoners on board, contrived to make the Britiſh prize-maſter and his companions very drunk, and to keep them ſo till the veſſel was brought into the port of Philadelphia. And now the owners claim their veſſel again, on paying ſalvage, agreeably to the marine laws of America.

BUT it was urged, that they, being French ſubjects, ought to be determined by the law of France, which gives the whole of re-captured veſſels to the re-captor, when the prize has been more than twenty four hours in the poſſeſſion of the enemy.

BUT the judge was of opinion, that as American owners were, in caſes of recapture, allowed the benefit of the American law in the admiralty courts of France, French owners ought alſo to have the benefit of the American law in the ports of the United States.

VERDICT, that the ſchooner be reſtored to her former owners, they paying to the re-captors one-half of the value in lieu of ſalvage.

HARRI-

HARRIDAN

verſus

THE SLOOP OF WAR HOPE.

Joſeph Blewer, et ali. Claimants.

AT the commencement of hoſtilities between Great Britain and America, the Britiſh ſeized ſeveral merchant veſſels in the harbour of Boſton, amongſt which was the *Hope*, belonging to Blewer, and others, of Philadelphia. The Britiſh afterwards fitted her out as a ſloop of war, and put her under royal commiſſion; and ſhe cruiſed againſt the veſſels of the United States for four years, and was at laſt captured by the libellant.

THE claimants inſiſted, that this veſſel had never been condemned as prize in a Britiſh court of admiralty; becauſe, at the time ſhe was ſeized at Boſton, no letters of marque and repriſal had as yet

yet iſſued againſt the United States, nor had the Britiſh courts of admiralty been eſtabliſhed in America for the condemnation of their veſſels: and thereupon they claimed their veſſel, on paying ſalvage according to the ordinance of congreſs of December 5th 1775.

Verdict for the claimants, as to the veſſel, her tackle, apparel, and furniture (except the guns and warlike ſtores which were condemned as prize) the ſaid claimants paying one-half of the value to the libellant for ſalvage.

N. B. This verdict was contrary to the opinion of the judge.

RICE

verſus

TAYLOR.

THE parties were commanders of privateers duly commiſſioned. Taylor engaged, and took a prize, Rice being in ſight at the time of the capture. Whereupon Rice claimed a ſhare of booty under the maritime law.

ON the trial it appeared, that although Rice was in ſight at the time of the action, yet from the peculiarity of his ſituation, it was impoſſible he ſhould have contributed to the capture by terrifying the enemy: and ſo the jury found a ſpecial verdict in theſe words.

"THAT captain John Rice was in ſight, and "at the diſtance of five or ſix miles at the time of

"the ſaid capture, mentioned, and ſo forth; but "that he did not contribute to the ſaid capture, "or influence her ſurrender to the ſaid captain "Taylor. And if upon this finding, &c. &c."

THE fact was, that Rice lay within a bar, cloſe upon the ſhore of New Jerſey, and ſaw Taylor engage a Britiſh veſſel, about five or ſix miles out at ſea. There were alſo two Britiſh veſſels of force between Rice and Taylor, at the time of the action. Rice, obſerving the battle, ſaw at laſt one of the veſſels ſtrike to the other, but could not clearly diſcern which had the victory: believing that Taylor had ſurrendered, he reported in Jerſey that poor Taylor was taken at laſt. But he found a few days afterwards, that Taylor had been ſucceſsful, and brought his prize ſafe into port. Whereupon he claimed a ſhare of the booty under the general law reſpecting veſſels in ſight of a capture.

IN the argument on the ſpecial verdict, the counſel for Rice reſted his claim principally on Molloy, Book I^st^ chap. 2. ſect. 20. urging that no teſtimony ſhould be admitted againſt a preſumption of law.

BUT the judge obſerved, that the preſumption of law is founded on a material fact: to wit, that the veſſel in ſight be armed and *prepared for battle*, or at leaſt in a poſſible condition to join in the battle. When this is the caſe, the law will preſume that her preſence terrified the enemy and influenced the ſurrender; and therefore, although ſhe does not join in the engagement, allows her a ſhare of the prize in proportion to her men and guns. But if a veſſel in ſight is aground on a ſhoal or bar, or is far to leeward, with diſabled maſts and rigging, or is ſo ſituated (as in the preſent caſe) that it is manifeſtly impoſſible for her to take any part in the battle, ſhe cannot be conſidered as to be ſo *prepared for battle* as to bring her within the preſumption of law.

"WHEN the reaſon of the law ceaſes, the law "itſelf ought likewiſe to ceaſe with it." 1ſt Black. p. 61.

AND ſo Rice's claim was diſmiſſed.

THERE was an appeal from this deciſion, but the appeal was not proſecuted.

GEDDES

GEDDES

verſus

THE GOLDEN ROSE.

THE *Golden Roſe*, belonging to ſubjects of the States of Holland, ſailed from Hamburgh with a cargo conſigned to Colloghan and Sons, merchants, in the iſland of Teneriff, an iſland belonging to the crown of Spain.

HOLLAND was at this time in a ſtate neutrality, but Britain had declared war againſt Spain, and neither of theſe nations were in alliance with the United States of America.

THE Golden Roſe was captured near the Iſland of Teneriff by a Britiſh privateer, and ordered for New York, then in poſſeſſion of the Britiſh army, and on her way to New York ſhe was re-

taken by the libellant and brought into the port of Philadelphia.

HASSENCLEVER filed a claim for the ſhip and cargo in behalf of the owners and merchants, ſubjects of the ſtates of Holland, and

DON Juan de Miralles alſo filed a claim for the cargo only, in behalf of Colloghan and Sons, ſubjects of the king of Spain.

IT was argued for the libellant, that although the ſhip and cargo did originally belong to the ſubjects of neutral powers with reſpect to America, yet the property had totally diveſted by the Britiſh capture, the veſſel having been more than than ſix weeks in their poſſeſſion: that if any injury was done to the neutral owners, it was done by the Britiſh captain who firſt took her, and not by the libellant, who forced her from a declared enemy as he had a right to do: that the preſent caſe came within the reſolve of congreſs of November, 1775, declaring that all veſſels employed in tranſporting proviſions, ſtores, and ſo forth, to the enemy in New York, ſhould, if taken, be lawful prize. And laſtly, that if this veſſel ſhould not be condemned as prize, it would be eaſy for ſubjects of neutral nations to ſupply the Britiſh at New

York

York with all things neceſſary for carrying on the war againſt us by colluſion.

On the contrary, it was urged for the claimants, that this ſhip had committed no offence whatever, that her intended voyage was a lawful one, viz. from Hamburgh to Teneriff. And although the libellant took her in her way to New York, yet it was by compulſion that ſhe was found in that courſe. that the Britiſh privateer had violated the laws of nations in taking her, and therefore ſhe could not have been condemned in their courts of admiralty; inferring, that as ſhe was not legal prize to the captors, the re-captors could have no better title: and that, ſuppoſing the cargo to be Spaniſh property, yet as it had not been condemned to the captors, the property had not been totally diveſted, but that the *jus poſtliminii* took place, agreeably to the ordinance of congreſs of December 5. 1775.

After long argument, the judge inſtructed the jury, that as the facts were all acceded to in this cauſe, viz. That the ſhip was Dutch, and the cargo Spaniſh property, and that ſhe had been taken and retaken, as ſet forth in the libel, the deciſion muſt depend upon points of law only, and therefore recommended their bringing in a ſpecial

verdict; adding, that he would not give his opinion on the law, without taking time to look into the authorities referred to, and reconſidering the arguments on both ſides.

THE jury, after a long receſs, brought in a *general* verdict, viz.

" THE jury find for the firſt claimant as to the " ſhip, and they award freight according to charter- " party. And they find a cheſt of clothes, and a " piece of linen to be the property of William " Vanderwindt*. The ſaid ſhip and goods to be re- " ſtored without ſalvage.

" THE jury find that the cargo, as ſet forth in " three invoices exhibited in this cauſe, are the " goods of John Colloghan and Sons, of the Iſland " of Teneriff, the ſecond claimants, they paying " the ſaid George Geddes for ſalvage, one moiety " thereof."

* The Captain of the Golden Roſe when ſhe was firſt captured.

DUCA-

DUCATUR

verſus

THE SCHONER DESIRE.

Argument on a ſpecial verdict.

THE queſtion was whether French owners ſhould have the benefit of the ordinance of congreſs relative to recaptures, and it was ſo determined. Vide p. Q. 13.

☞ March 8th 1780, the law of Pennſylvania, admitting juries to decide in admiralty cauſes was repealed, and a new admiralty, law enacted, leaving the determination of ſuch cauſes to the judge.

(1780.)

MONTGOMERY

verſus.

WHARTON, AND OTHERS, OWNERS OF THE SHIP GENERAL GREENE.

WHARTON, and others, owners of the ſhip General Greene, had chartered her to certain merchants for a particular voyage, and appointed Montgomery maſter for that voyage. The ſhip had cleared out at the naval office, and was on the point of ſailing, when a ſudden froſt filled the Delaware with ice, and fixed her in the port of Philadelphia. During the winter ſome differences

ces aroſe between the owners and maſter. The conſequence of which was that the owners, by a letter of diſmiſſion, diſcharged Montgomery from their ſervice, and put another maſter on board. Whereupon Montgomery libelled againſt the owners in the admiralty to compell them to fulfil their contract with him.

THE queſtion was, whether owners could diſmiſs the maſter they had appointed before the completion of the voyage, after he had ſigned bills of lading for the cargo, and ſhipped his mariners, without the owners ſhewing ſufficient cauſe for ſuch diſmiſſion.

AND it was contended, that the maſter, from the time of his appointment, has the ſole command of the ſhip veſted in him, and cannot be diſplaced without committing ſome offence ſufficient to forfeit his rights and juſtify a diſmiſſion. That after ſigning bills of lading, he becomes anſwerable to the freighters for the delivery of the cargo, and that the owners cannot by their act exonerate him from this charge, whilſt the bills of lading ſigned with his hand, remain in the poſſeſſion of the freighters: that the libellant, conſidering himſelf as engaged for this voyage, had neglected to ſeek for any other appointment; and that the

owners

owners diſcharging him at this time, was an injury which the court ought in juſtice to redreſs by compelling them to reinſtate him in his office.

In behalf of the reſpondents it was urged, that the owners of a ſhip have, and ought to have, a right to remove the maſter at pleaſure; becauſe their intereſts are ſo deeply concerned in the appointment, that they are anſwerable not only for his imprudent conduct, but are bound by contracts he may legally make on account of the concern: that if, after their their choice of a maſter, his appointment ſhould be deemed irrevocable for the voyage, unleſs ſome groſs offence can be proved, the owners will be at the mercy of the maſter, who, by his weak or wicked conduct, may bring them to ruin. That if when the owners have diſmiſſed the maſter, the court ſhould undertake to reinſtate him, contrary to their judgment and inclination, and ſo force him upon them, the court and not the owners, ought to be anſwerable to the freighters for any conſequences that may enſue: that neither the charter-party, ſhipping articles, or bills of lading, prohibit a change of the maſter, as the contracts made with him are made in his official and not in his perſonal capacity: that the maſter is in fact the repreſentative of the owners, and not himſelf perſonally bound,

bound, neither is he anſwerable for the conduct of his ſucceſſor: that in caſe an action ſhould be brought againſt him for a breach of contract on the bills of lading, he might plead his diſmiſſion by the owners, and it would be good in law: that the ſubordinate officers are appointed by the maſter of a ſhip, and if they ſhould miſbehave, or prove inſufficient or unſafe, the owners have no remedy but by the removal of the maſter: that if owners are bound by the appointment of a maſter to continue him for the voyage, the maſter ought alſo to be bound to perform the voyage, even againſt his intereſt or inclination; but if, in caſe of the maſter's refuſal, the owners ſhould libel againſt him in the admiralty, the court could give no redreſs, becauſe the court cannot award damages, neither can it compel the maſter to a ſpecific performance of his contract, from the nature of the ſervice: that the maſter's appointment is, and ought to be during pleaſure only: that the ſame power which appoints can remove: that if a maſter ſuffers injury by an unreaſonable diſmiſſion, he may have his remedy at common law, where ample recompence in damages will be made to him: and finally, that whatever inconveniences may ariſe to maſters being ſubjected to the caprice of owners

of

of veſſels, much greater would ariſe to the owners, ſhould they be compelled to retain in their ſervice maſters once appointed, however contrary to their judgment or intereſt; and that no inſtance can be produced of a maſter being thus forced upon the owners of a ſhip by any court whatever.

To which, council for the libellant replied—That this cauſe came properly before the court of admiralty: that where a court hath the right to take cognizance of an injury, it follows neceſſarily that it can give redreſs: that if the court cannot award damages, it can order a ſpecific performance of the contract: that the court can compel the maſter to ſuch performance; and if he refuſes, can attach his perſon, and oblige him to give ſecurity for the completion of his contract; and, therefore, the juriſdiction is competent: that it would be unjuſt to ſend the maſter to common law for redreſs, on the owner's breach of contract, as the owners may fail and be unable to pay damages, and therefore the ſhip ought to be his certain and proper ſecurity: that all contracts ought to be ſacred and mutual, being founded on reciprocity; and it would be abſurd to alledge, that the maſter is bound on his part, and the owners not bound on theirs: that a maſter engaged for a voyage, is like

like a ſervant indented for a certain time; and that the engagement or indenture cannot be diſſolved, during the terms, but by mutual conſent: that this veſſel was chartered to the freighter, who acquired by the charter-party a temporary property in her, and the owners had nothing to do with her for the time, the ſhip being under the ſame circumſtances with a houſe leaſed for a term: that after the charter-party is ſigned, and the goods laden on board, the owners cannot diſcharge the maſter at their pleaſure; as his good character and abilities might have been the inducement which led the freighter to make choice of that ſhip in preference: and, laſtly, that if no inſtance can be found of a maſter's being forced upon the owners of a ſhip, neither can any authority be produced, giving the owners the arbitrary power of diſmiſſing the maſter at pleaſure, and without aſſigning ſufficient cauſe.

JUDGMENT.

After having carefully conſidered the arguments advanced, and the authorities cited in this cauſe, it appears to me unneceſſary to purſue the whole tract of argument that hath been taken on this occaſion. The deciſion of the cauſe reſts ſolely on the nature of the contract between the owners

ners of a ſhip and the captain they employ. And the terms or ſubſtance of ſuch a contract is, in my opinion this, viz. If the maſter well and faithfully performs the duties of his ſtation, the owners, on on their part, are bound to pay the ſtipulated wages, and allow him all the cuſtomary privileges of his office. But it does not ſeem to be any part of the contract, that a maſter once engaged, ſhall be maſter for the voyage at all events. This might be extremely injurious to owners, on account of the very extenſive powers a maſter hath over their property. And however hard it may appear that that the maſter ſhould be ſubject to the caprice of his owners in this reſpect, he muſt conſider it as one of the unavoidable inconveniences of his occupation, and in caſes of real injury apply to the laws of his country for redreſs. Much greater would the danger be to owners of veſſels, and indeed to commerce in general, if the appointment of a maſter ſhould be irrevocable for the voyage. Whatever good opinion an owner may have of the maſter, at the time of his appointment, he may find ſufficient reaſon afterwards to change his mind, and yet not be able to produce legal proof of his defection or inability. Fidelity or infidelity before a ſervice performed, is a matter of opinion only, and it would be an unreaſonable hardſhip to compel

pel an owner to continue what was originally a voluntary truſt, in the hands of a perſon of whom he may have found ſubſequent reaſons to believe that he may prove either unfaithful or unſkilful, although he may not be able to charge him with any poſitive offence: but I cannot ſee how this court can interfere to any effect. If the court ſhould decree that the owners ſhall receive the libellant on board, as maſter for the voyage contracted for; have not the owners a power to ſell their ſhip, to lay her up, or totally change the voyage, and ſo evade the decree? Or, if a maſter ſhould refuſe to go the voyage for which he engaged, can this court compel a ſpecific performance of the duties of his office? The remedy in both caſes muſt be in damages for a breach of contract, to which the common law is moſt competent. Let the bill be diſmiſſed.

The libellant appealed from this judgment, and the cauſe was again fully argued before the judges of the high court of errors and appeals; but the libel was finally diſmiſſed.

THE GOLDEN ROSE.

THE marſhal of the court brought in an account againſt the ſhip *Golden Roſe*, for ſundry expenditures made, and ſervices done for the ſaid ſhip and her cargo; and prayed the judge to direct what parts of the ſaid account ſhould be charged to the ſhip, and what to the cargo.

THE judge, after hearing argument thereupon, directed,

Firſt, That captain Vanderwindt pay for the pilotage of his ſhip into port; becauſe this expence would have accrued to him, if he had arrived at the port of his deſtination.

Secondly, That he alſo pay all reaſonable charges for wharfage and faſtenings: becauſe, by the terms of the charter-party, he is to bring his ſhip to a fit place for unlading, and becauſe thoſe expences are neceſſary to the ſafety of his ſhip.

Thirdly, That the cargo be charged with all reaſonable

reaſonable expences attending the unlading of the ſhip: becauſe by the fifth article of the charter-party, it is covenanted, that the freighter ſhall cauſe the cargo to be brought on board, and at the place of diſcharge, taken from on board, free of charges.

Fourthly, That the expence of cutting the ſhip out of the ice be borne by the ſhip and cargo, in equal proportions, provided the cargo was on board when this ſervice was done—otherwiſe, by the ſhip only: becauſe this was equally neceſſary for the preſervation of both.

Fifthly, That the marſhal's bill for keeping watch on board, whilſt the property was in his poſſeſſion, as alſo the court charges, or coſts of ſuit, be charged to the cargo: becauſe the ſhip on the trial was fully acquitted.

Laſtly, Wherever a charge is allotted in the above apportionment to be paid by the cargo, it is to be underſtood that the libellants are to pay one half thereof, and Colloghan and Sons, or their agents, the other half: becauſe thoſe charges are ſuppoſed to be deducted from the whole cargo before diſtribution made between the libellants and claimants, according to the decree.

DUCATUR.

verſus

THE BRIG NYMPH.

Claim by Thomas Irwin & al.

IT appeared in teſtimony that the Brig Nymph (formerly called the Neptune), had been the property of the claimants, and was captured by the Britiſh ſhip *Iris* on the 22nd or 23d of April 1780: that on the 21st, and 22nd of the ſame month, three other veſſels were alſo taken by the ſame ſhip, all which prizes were ſent into New York: that on the 28th of the ſame month the captains of theſe four prizes were all taken before the judge of admiralty there, and examined, preparatory to the trial and condemnation of their veſſels: that, about a fortnight after, one of the ſaid four captains

tains was told by ſome of the officers of the Iris, and alſo by ſome of the crew, that they had received their ſhares of the four prizes aforeſaid. It was alſo in proof, that the ſaid four veſſels had been advertiſed for ſale at the coffee-houſe in New York; and one of them, viz. the *Hetty*, was particularly remembered to have been advertiſed, *as a condemned prize:* that the Neptune had been purchaſed by merchants in New York; and that on the 13th of May following ſhe was commiſſioned as a privateer, by the name of the *Nymph*, to cruiſe againſt the veſſels of the United States of America. Laſtly, it appeared this brig ſailed from New York on the 21st and was captured by the libellant on the 25th of May.

AGAINST the libel of the captors there was a claim filed, by Thomas Irwin and others, the former owners, founded on the ordinance of congreſs of the 5th of December 1775, upon a ſuggeſtion that this veſſel could not have been condemned in the court of admiralty at New York previous to the re-capture: and in ſupport of this ſuggeſtion, a Britiſh act of parliament was exhibited, wherein is ſet forth at large the mode in which the veſſels captured from the United States of America ſhall be proceeded againſt in their courts of admiralty. Which act directs, that for the more

more ſpeedy condemnation of ſuch veſſels, the whole proceſs ſhall be completed in 28 days from the firſt application made to the judge by the captors; and the claimants alledged that this brig not only ſailed from New York, but was re-captured by the libellant before the 28 days were accompliſhed; and therefore inferred, that ſhe could could not have been condemned under this act: that all the evidence produced by the libellant to proved a condemnation was merely hearſay, and ought to have no weight, eſpecially as there was no mention made of any ſuch condemnation amongſt the papers found on board, as is uſual. And laſtly, that her having been ſold, commiſſioned, and ſailing, and the money paid for purchaſing her, being diſtributed amongſt the firſt captors (if true) is ſtill no proof, or even preſumption, of her condemnation; becauſe it is cuſtomary for the judge to permit prizes to be ſold before trial, the parties giving ſecurity; and inſiſted, that before the property can totally diveſt, the condemnation muſt be directly proved, according to the ordinance of December 5th 1775.

WHEREUPON the judge obſerved,

THAT the manifeſt ſpirit of the ordinance of congreſs of December 5th is truly complied with when

when the property is fully and fairly diveſted: that the moſt direct and deciſive way of aſcertaining ſuch diveſture is by legal condemnation in the enemy's court of admiralty; and therefore the ordinance makes that the criterion; but that congreſs could not expect that full and direct proof of ſuch condemnation could in all caſes be produced, as the documents neceſſary to ſuch proof cannot always be in power of the parties; ſtrong preſumption muſt therefore often ſupply the place of abſolute proof: that this brig having been captured, taken into the enemy's port, ſold by order of the judge, commiſſioned under a new name, fitted out and ſent by new owners on a cruize, muſt found a violent preſumption that ſhe had been legally condemned as lawful prize to the firſt captors: that whether ſhe had been formally condemned or not, theſe circumſtances were fully ſufficient to a total diveſture of the property from the former owners: that the act of parliament referred to, is profeſſedly deſigned to ſhorten the proceſs of the courts of admiralty, and directs that it ſhall be completed within 28 days; but does not prohibit its being done in a ſhorter time: that as proofs have been given that ſome veſſels have been condemned in a ſhorter time, it is poſſible, and even probable, that this brig might alſo have

been ſo condemned, and that ſuch a preſumption is juſtifiable by all the circumſtances of the caſe.

JUDGMENT.

THAT the brig be condemned as lawful prize to the libellants, and that the claim be diſmiſſed.

KEMP

verſus

THE SLOOP SARAH.

Stiles, and others, claimants.

THE Sloop Sarah, being Bermudian property, ſailed with a cargo of onions, ſugar, ſalt, gin, flour and oil, from from Bermudas for Charleſtown in South Carolina, the owners knowing at the time of her ſailing that Charleſtown was then in the

the poſſeſſion of the Britiſh troops. The libellants diſcovered and captured her on Charlestown bar, at the entrance of the harbour, brought her into the port of Philadelphia, and libelled againſt her as prize.

WHEREUPON a claim was filed in behalf of Stiles, and others, the former owners.

AND it was urged in ſupport of the claim, that by an ordinance of congreſs of the 24th of July 1776, the property of Bermudians was exempted from confiſcation: that under the ſanction of this ordinance the Bermudians had traded with the United States during the war, and frequently ſupplied their neceſſities at a very great hazard: and that Stiles the claimant in particular had been twice taken priſoner by the Britiſh for trading with the ſubjects of the United States: that the preſent cargo was not ſent as ſupplies to the enemy: that the flour on board was too inconſiderable a quantity to anſwer any ſuch purpoſe; and that ſalt could be imported into Charleſtown much more conveniently and cheaper from Turks Iſland than from Bermudas. That the truth is, this cargo was deſigned in part to diſcharge a debt due from the claimants to a certain Mr Loyd a known friend

friend to the American cauſe, and now a priſoner in Charleſtown, and in part to purchaſe neceſſaries for the inhabitants of Bermudas: that the ordinance of congreſs prohibiting any veſſels from carrying ſupplies, &c. to any part of the United States in the poſſeſſion of the enemy, cannot be ſuppoſed to extend to veſſels carrying proviſions to relieve the wants of the ſubjects of thoſe ſtates who are priſoners and in diſtreſs, for that ſuch an extenſion would be contrary to reaſon, humanity, and good policy. Teſtimony was alſo produced to prove, that there was really a debt due from the claimants to Mr Loyd at Charleſtown; and that the owners, or ſome of them, had declared before the veſſel ſailed from Bermudas, that part of the cargo was to diſcharge the debt due to Mr. Loyd, and the remainder to purchaſe proviſions.

The arguments being cloſed, the judge obſerved,

That the ordinance of congreſs in favour of the inhabitants of Bermudas, a people under the ſovereignty and allegiance of Great Britain, could never be intended to put them on a better footing with reſpect to the war, than the citizens of America, or the citizens of neutral powers; and that there could be but little doubt, but that an Ame-

American veſſel, taken in the ſituation of the brig Sarah, would have been confiſcated: that the plea, that ſhe was carrying ſupplies to a priſoner, ought to have been ſupported by full and direct teſtimony, to counteract the violent preſumption to the contrary; but here was no direct teſtimony to that point, and even ſuppoſing the ſuggeſtion to be true, as to the good intentions of the claimants, they had not conducted the buſineſs according to the known rules of war; for leave ſhould have been firſt obtained from the Britiſh commander at Charleſtown, even for Bermudians to ſend in ſupplies to his priſoners. It is indeed in proof, that there is a debt due from the claimants to Mr. Loyd, a priſoner in Charleſtown; and that one of the owners was heard to ſay, that part of this cargo was to diſcharge that debt, and the remainder to purchaſe proviſions: but it no where appears, what was the amount of this debt, a very neceſſary circumſtance, if all other objections were out of the way; otherwiſe, under cover of ſmall and trifling debts due to priſoners, large and important ſupplies might be introduced to the enemy; and at any rate, the plea of paying a debt due could extend no further than the amount of that debt. But in oppoſition to theſe appearances of good intentions, it is in proof, that the owners originally deſigned this veſſel and

cargo

cargo for the Weſt India Iſlands, but changed the voyage as ſoon as it was known that Charleſtown had ſurrendered to the enemy.

I adjudge that this veſſel and cargo be condemned as prize to the libellants, and that the claim be diſmiſſed.

WALKER

verſus

THE ALBION.

THIS ſhip was taken on her way from Liverpool to Archangel, having on board a cargo of ſalt and a hogſhead of rum. The captors ſent in with the prize, the ſhip's gunner, and three lads, priſoners; alſo two cuſtom-houſe cockets, and an imperfect logbook or journal, ſaid to be all the papers found

found on board at the time ſhe was taken. One of theſe cockets reſpected the ſalt on board, and the other, the rum. The prize-maſter ſwore that there were no other papers found in the ſhip; and the gunner depoſed, that the veſſel was the property of *Ormſon and Son*, merchants in Liverpool, but that the ſalt and rum were ſhipped by a conſul from the court of Ruſſia, at Liverpool, on account of the empreſs of Ruſſia.

ON this appearance of the cargo's being neutral property, the judge directed the attorney general to file and proſecute a claim for the ſaid cargo in behalf of the her majeſty Ruſſia.

THE cauſe being fully argued, the judge declared himſelf as follows:

IT is not eſſential to the preſent enquiry, whether it is probable or not, that there is at Liverpool ſuch a character as a conſul from the court of Ruſſia, or what the rights and privileges of a conſul are, by the law of nations; ſubjects which have perhaps been too largely diſcuſſed in the courſe of this argument. The only queſtion ſeems to be, Is there ſufficient proof or not that this cargo was ſhipped on account of her majeſty of Ruſſia, by her factor

tor or agent at Liverpool? or, in other words, Is the cargo neutral property or not?

THE teſtimony, by which this queſtion is to be determined, ſtands thus: On the one ſide are the cuſtom-houſe cockets of Liverpool, certifying the ſalt to have been ſhipped by Meſſrs. *Gilbert and company*, merchants, of Liverpool, and the rum to have been ſhipped by a Mr. *Roe*, of the ſame place. On the other ſide we have the depoſition of the gunner of the ſhip, who belonged to her, as he ſays, at the time ſhe was taking in her lading at Liverpool; and expreſsly ſwears, that both the ſalt and rum were ſhipped by a Ruſſian conſul at Liverpool, on account of the empreſs; and gives ſeveral collateral circumſtances to ſupport the truth of his allegation.

IT has been ſuggeſted on the part of the claimant, that cuſtom-houſe papers are often fallacious, and not concluſive evidence: that, for various mercantile reaſons, borrowed names are often ſubſtituted for the names of the real ſhippers: that the depoſition of the gunner is direct and abſolute; and that from the ſeeming mutilation of the log-book, and the papers forwarded being ſo few, there is reaſon to ſuſpect a ſuppreſſion of evidence on the part of the captors, in order to conceal from

from the court the real proprietor of this cargo; and that this ſuſpicion is further countenanced by the captors not ſending forward the captain or mate of the prize, as by his inſtructions he ought to have done.

HAVING conſidered, as well theſe, as the arguments adduced in behalf of the libellants, I am of opinion, That the teſtimony of the gunner, founded on report only, concerning a matter in which he cannot be ſuppoſed to have any certain or accurate knowledge, however honeſtly or impartially given, ought not to outweigh the certified declaration of regular, official papers, unleſs ſome probable proof can be given, or circumſtances adduced to ſhew, that theſe papers are, or may be, fallacious. There does not, in the preſent caſe, appear any reaſon, why a Ruſſian factor or agent ſhould make uſe of the names of Liverpool merchants to cover his neutral property, which would have been ſecure from confiſcation without any ſuch artifice: that a Britiſh merchant ſhould, in the preſent war, ſtrive to conceal his property under a neutral name is a very natural ſuggeſtion; but common ſenſe will not allow the ſuppoſition, that a neutral owner, already ſecure, would riſk property under the borrowed names of perſons, whoſe names alone would endanger confiſcation in caſe

of

of capture. The condition of the papers, and the not ſending forward the captain or mate of the prize, induce a cenſure of negligence on the part of the captors; but a wilful ſuppreſſion of evidence for the evaſion of juſtice, is a crime of ſo heinous a nature, that it ought not to be preſumed of any one, unleſs very powerful circumſtances ſhall juſtify the preſumption.

I adjuge, that the ſhip Albion and her cargo, be condemned as lawful prize to the libellants.

FREDERICK PHILE

verſus

THE BRIG ACTIVE, AND HER CARGO.

THE brig *Active* was ſeized by *Frederick Phile*, the naval officer of Pennſylvania, going out of the port of Philadelphia, with a cargo of flour in violation of an embargo law of the ſtate.

JUDG-

JUDGMENT.

THAT the veſſel, and her cargo, conſiſting of 252 barrels of flour, be condemned; one-third part to the uſe of the ſtate, one-third to the naval officer, and the remaining one-third part to the informer, according to the law.

JOB PRAY, & ALI.

verſus

THE BRIG RECOVERY.

Claim by Robert Morris, on behalf of the UNITED STATES.

JOB Pray and Aaron Stockholm engaged and took as prize, the brig *Recovery*, a veſſel belonging to the enemy; the ſchooner Livingſton, a veſſel belonging to Robert Morris, the claimant, being in ſight at the time of the capture. Pray and Stockholm were duly commiſſioned by con-

greſs to cruize as privateers againſt the enemy; but Kelly, the maſter of the Livingſton, had no ſuch commiſſion.

THE council for the claimant urged, that it was a principle of law—that *prizes taken by veſſels not commiſſioned, inured to the ſovereign power*, and exhibited a transfer from congreſs, of all their title to any ſhare in this prize to Robert Morris; empowering him to proſecute a claim, in the name of the United States, but for his own benefit. And the authorities cited in ſupport of this doctrine, were *Carthew* 474, and 12th *Modern* 134.

BUT neither of theſe authorities apply ſtrictly to the preſent caſe. In the one, the prize was a wreck, ſtranded on the ſhore, and great part of the booty was taken on ſhore by the crews of veſſels not commiſſioned: in the other, a veſſel without a commiſſion, took a prize, and carried her into a foreign port, where the captor ſold her, and converted the money to his own uſe.

IN both caſes, the booty was taken by perſons not commiſſioned to take; no veſſels duly commiſſioned aſſiſting in, or being preſent at the time of the capture. But in the preſent caſe, the prize was in fact taken by veſſels regularly authorized

for the purpoſe, and the non-commiſſioned veſſel only in ſight at the time of the battle. In the caſes cited, no perſons were preſent or aſſiſting to whom the booty could be legally adjudged. Here the libellants, the real captors, were duly commiſſioned to take, and empowered by their commiſſions, and the reſolves of congreſs, to poſſeſs and enjoy the property ſo legally taken.

A veſſel not commiſſioned muſt be conſidered as a mere merchantman; and according to *Lee*, 237, if a merchant veſſel meets an enemy in the courſe of the voyage, and takes her, the prize ſhall belong to the captor: but if ſhe goes out of her courſe to ſeek plunder, ſhe may be deemed a pirate. Now, it is not pretended that the Livingſton took the prize in queſtion; on the contrary, it is in teſtimony, that ſhe was running away whilſt the libellants were engaged with the enemy; and now claims a ſhare of the prize, as having been in ſight at the time of the capture.

The right under which a veſſel in ſight may claim a ſhare of a prize taken, is founded in a preſumption of law, which ſuppoſes a veſſel ſo in ſight, and armed, and prepared for battle, to have induced a ſurrender. A preſumption of law is a legal indulgence, and ought to be ſtrictly confined within

the reaſon of the preſumption. But no authority has been adduced to ſhew that this indulgence has been extended to a veſſel not commiſſioned to take, unarmed, and flying from the ſcene of action.

THE Livingſton cannot claim under the preſumption of law, not being within the deſcription; nor the United States under the general doctrine; becauſe the prize was in fact taken by veſſels duly authoriſed to take, which the Livingſton was not. I adjudge, therefore, that the claim in this cauſe be diſmiſſed, and that the brig *Recovery* be condemned as prize to the libellants.

YOUNG

verſus

THE SLOOP TWO FRIENDS.

Claim by Timothy Penny, *for the veſſel and part of the cargo; by* Alden Baſs, *for a quantity of glaſs and dry goods; and by* Jeruſha Fitch, *for rum and dry goods.*

TIMOTHY Penny, a citizen of the United States *of America*, having an eſtate in the iſland of Jamaica,

maica, obtained from congreſs a paſſport or ſafe conduct, for one Joſeph Dean, to go to Jamaica and purchaſe a veſſel there, which he was to load with "PRODUCE," on Penny's account, and to bring the ſaid veſſel and her cargo into any port of the United States not in the poſſeſſion of the enemy.

IT appears that the ſloop in queſtion was ſo purchaſed by Dean, and laden in part on Penny's account: that Meſſrs. *Fitch* and *Tyler*, of Jamaica, being friendly to Dean, and privy to the purpoſe for which he had purchaſed the ſloop, and the real deſtination of her voyage, put on board a quantity of rum and dry goods—the former, for the uſe of his mother, *Jeruſha Fitch* and his ſon reſiding at Boſton; and the latter for his friend *Alden Baſs*, at Boſton, who had charge of his (Tyler's) ſon: that the ſloop, ſo laden, cleared out at the cuſtom-houſe in Jamaica for New York, then in the poſſeſſion of the Britiſh troops, and ſailed under convoy of a Britiſh fleet, as for New York: that when ſhe arrived on the American coaſt, the captain made three attempts to run her into Cheſapeak Bay, but without ſucceſs, notwithſtanding ſeveral manœuvres to deceive the convoy. At length, being off the capes of Delaware, by ſlacking ſail, under pretence of the maſt's being ſprung and a

ſuppoſed leak, the captain dexterouſly left the fleet in the night, and ran up the Delaware, where his ſloop was taken by the libellants.

It has been admitted on the part of the libellants, that this ſloop did really intend for ſome port in the United States not in the poſſeſſion of of the enemy, and that the goods were *bona fide* ſhipped as ſet forth in the exhibits; and for the purpoſes alledged. But it is urged, that the ſafe conduct of congreſs ought to be ſtrictly conſtrued—that dry goods are not the *produce* of a Jamaica eſtate, and therefore not covered by the paſſport: that *Fitz* and *Tyler* are Britiſh ſubjects; and the property of the goods ſhipped by them not altered by the bills of lading, becauſe thoſe bills do not declare the uſe, the appropriation being only deſignated in private inſtructions, which, the parties might have revoked at pleaſure; and that under theſe circumſtances, being truly Britiſh property, they ought to be condemned as prize to the captor.

On examiming the complexion of this cauſe, I find that the peculiar circumſtances of the caſe, require that it ſhould be viewed in the liberal light of equity, rather than ſquared by the ſtricteſt rules of

of law. The intention of congreſs in granting the paſſport appears to have been to permit Timothy Penny to import the produce of his eſtate in Jamaica, for the benefit of himſelf and family; and it is but reaſonable to ſuppoſe that they meant this ſhould be done in the moſt beneficial manner. Had it been otherwiſe, congreſs would not have veſted an important reſtriction on a ſingle word of equivocal conſtruction; but would have inſerted a prohibitory clauſe in the paſſport. As to the law reſpecting bills of lading, it ſeems not to apply fully to the preſent caſe, becauſe the whole arrangement of this buſineſs was framed with a view to cover the property from ſeizure by Britiſh captors, and not according to the cuſtom of merchants in open commerce. Theſe bills of lading and inſtructions were altogether confidential.

It muſt be allowed, that Fitch and Tyler, reſiding in Jamaica, and being profeſſedly Britiſh ſubjects, had no right to ſhip goods for the United States; and as their part of the cargo is not covered by the paſſport, they ran great riſk of confiſcation into whatever hands they might fall. If it could be made appear, that theſe goods were to have been ſold for their perſonal benefit, they would doubtleſs be prize to the captors. But as it is manifeſt from the teſtimony, and admitted

by counſel for the libellants, that the goods ſhipped by Fitch were for the ſupport of his aged mother and his ſon at Boſton, ſubjects of the United States, and that thoſe ſhipped by Tyler were for uſe of his ſon, under the care of his friend Alden Baſs, alſo American ſubjects, or to diſcharge debts already contracted on their accounts, it ſeems to be one of thoſe caſes to which the ſtrictneſs of law ought not to be rigorouſly applied—more eſpecially as there is little reaſon to apprehend that lenity here may form a dangerous precedent for hereafter, becauſe a like caſe will probably never occur again—paſſports of this kind being very rare.

Let the libel be diſmiſſed; and the ſloop and her cargo be delivered to the claimants. But as there was ſuch probable cauſe of capture, I adjudge that the claimants pay the coſts and charges.

N. B. From this decree the libellants appealed; but the court of appeals confirmed the ſentence.

PATRICK

PATRICK MAHOON & AL.

verſus

THE BRIG GLOCESTER.

Libel for prize money.

THE Brig Glocester had been captured by Roger Kean in the privateer Holker, and condemned as prize to the captors. The marſhal being about to make diſtribution of the booty amongſt the crew, according to the liſt handed in by captain Kean, was notified to ſtay in his hands 25 ſhares of the ſaid prize, claimed by Patrick Mahoon, and others, as being a part of the crew belonging to, and concerned in the ſaid privateer Holker. Notwithſtanding that their names were not to be found in the captain's return; the libel, now before the court is for theſe 25 ſhares.

THE circumſtances of this caſe appear, by the teſtimony exhibited, to be as follows.

THE printed articles of the privateer Holker were ſet up at a common houſe of rendezvous for the

the enliſtment of privateer's men, according to cuſtom. The libellants, in common with many others, ſigned theſe articles, and made the neceſſary preparations for the cruiſe. When the Holker was ready to ſail, the libellants, with the reſt of the crew, repaired on board by order of the captain, and the veſſel ſet ſail. When they arrived at Cheſter on the Delaware (15 miles below Philadelphia) captain Kean muſtered his crew upon deck, called over their names as ſubſcribed to the articles, and then, without giving any reaſon for his conduct, ſelected Patrick Mahoon and 24 others, and ordered them on ſhore; refuſing to let them proceed on the cruiſe, and when they earneſtly ſolicited to be continued on board he forcibly drove them away, and the captain proceeded on his voyage, leaving the libellants behind.

A few days after Kean again called his crew together, and produced to them another printed copy of articles, which he urged them to ſign. Some objected, obſerving that they had already ſigned, and did not underſtand ſigning two ſets of articles for the ſame cruiſe; but the captain enforced them with threats and even blows, to ſign the new articles; declaring at the ſame time, that his view

was

was to exclude thoſe men whom he had left behind from having any ſhare of the prizes they might take. The Brig Gloceſter was captured during this cruiſe.

THE reſpondents have reſted their cauſe principally on a plea to the juriſdiction of this court; alledging that the injury, if any, was excluſively of common law cognizance; becauſe the libellants claim was founded in articles executed on ſhore, within the body of a country: that although the admiralty could determine the queſtion of prize or no prize; yet it could not determine to whoſe uſe, having no juriſdiction in diſputes between owner and owner, owner and captain, or captain and mariner, except only in the caſe of a mariner's wages, which is allowed out of ſpecial favour, and not of right, further than as *communis error facit jus.*

THE facts being fully aſcertained, and not controverted, no difficulty ariſes from that quarter. It is in proof that captain Kean forced the libellants on ſhore after the voyage was begun, and compelled the remainder of the crew to ſign the new articles, with a veiw to exclude the libellants from any advantage they might claim under the former

former; and it is contended that this court cannot redreſs the injury, becauſe the ſuit reſpects *damages*, which the common law alone can aſcertain. The truth however is, that the parties do not ſue for redreſs of an injury; but for their ſhares of a prize legally condemned to the uſe *of the owners, officers, and crew, and of all perſons belonging to, or concerned in the privateer Hólker*: of which crew, they ſay, they are a part. The articles of enliſtment, executed on ſhore, is no bar to the juriſdiction of the admiralty. Mariners are generally engaged on ſhore, and always ſue for their wages in this court. In the one caſe the mariners are paid by monthly wages, or by the run, in the other by a ſhare of the booty taken. There is the ſame reaſon in both caſes. But I am of opinion that the articles are not the true foundation of a ſeaman's claim. If one or more mariners ſhould enter on board a veſſel, with the knowledge and conſent of the maſter, ſhould receive his orders and perform the duties of the ſtaion, they would be entitled to cuſtomary wages, or a proportion of the booty taken in common with the reſt of the crew, although they had ſigned no articles at all, the right is not founded in the articles, but in the ſervice.

It has been ſaid, that this court can only determine the queſtion *prize or no prize*, but cannot adjudge

judge *to whoſe uſe*. *Broom's* caſe in Carth. 399 and 475, is expreſs in point to the contrary. The admiralty not only decreed *lawful prize*, but alſo to whoſe uſe, viz. *to the King's*; and Broom having converted the property to his own uſe, was ſued in the admiralty by the king's proctor for the value. Broom applied for a prohibition, which was denied; becauſe the court of admiralty, having determined the property to be prize *to the king*, this ſecond ſuit was deemed to be only a continuation of the original proceſs.

Moreover, it cannot be ſuppoſed but that during the many maritime wars in which England hath been engaged, conteſts about the rights of ſeamen to ſhares of prizes muſt have frequently occurred. If then ſuch claims were only triable at common law, they would doubtleſs appear in ſome of the books of reports. But no actions of this kind can be found in thoſe books, nor even prohibitions prayed for in ſuch caſes. The inference is, that ſuch ſuits were allowed to be excluſively of admiralty juriſdiction.

If Captain Kean had any reaſonable objections againſt the libellants, he ſhould have made thoſe objections before he received them on board, or at leaſt

leaſt before the veſſel had weighed anchor and commenced her voyage.

As the libellants were in fact forced from the ſervice, I do not ſee why this wrong, on the part of the captain, ſhould deprive them of the right they had obtained in this cruiſe by the enliſtment, and by the captain's confirmation of that enliſtment when he received them into his ſervice.

I adjudge that the libellants have and receive their reſpective ſhares of the prize Brig Gloceſter, and her cargo, in common with the reſt of the Holker's crew.

N. B. The reſpondents appealed from this decree; but the court of appeals confirmed the ſentence.

PRINGLE

PRINGLE AND SHEE

vreſus

THE ELIZABETH.

Claim by Charles Phile.

THE Brig Elizabeth arrived with a cargo of dry goods on the 26th of February 1781 at Glouceſter, in the river Delaware, from Cork in Ireland: being the property of merchants of Cork, ſubjects of the king of great Britain when there was war between Great Britain and America.

CHARLES PHILE, the claimant hearing of this arrival, procured a deputation from the naval officer of the port of Philadelphia, dated the 27th of February; and on the ſame day went down to Glouceſter, and ſeized the veſſel under authority of his deputation, and by virtue of an act of aſſembly of this ſtate.

IN this manner Phile poſſeſſed himſelf of the veſſel, and afterwards had her brought up to the city, ſecured her at the wharf, and placed a guard on board.

AFTER this, viz. on the 2d of March the libellants entered on board this veſſel, and by virtue of an ordinance of congreſs of the 26th of December 1776, authoriſing "the people of the country, or "detachments from the army, to make prize of "the veſſels and goods of the enemy that may "happen to be taken near the ſhore,"—ſeized the brig and her cargo as *lawful prize*, and on the ſame day made report to the judge of admiralty, that they had ſo done. On the 6th they filed their libel in the regiſter's office; and on the ſame day a writ of attachment iſſued, and the marſhal of the court took poſſeſſion of her in behalf of the libellants.

AFTERWARDS, viz. on the 10th of March, Charles Phile entered his claim in this court for the veſſel and cargo, as a captor alſo, under the ſame ordinance of congreſs.

THESE tranſactions, as to the manner and time of the performance, ſtand uncontroverted by the parties. Of the remaining teſtimony exhibited in this

this cauſe, there is but one circumſtance of any importance, viz. when Phile made the ſeizure on the 27th of February, he was aſked by the captain of the brig, by what authority he did it? and if it was for congreſs? To which he anſwered NO, *it was for the naval officer.* Then ſhewing the captain his deputation, he ſaid, *that was his authority.*

SUCH are the materials upon which this cauſe has been argued, and it is urged in behalf of the claimant, that notwithſtanding the prior date of Mr. Pringle's libel, Phile was in fact the firſt and real captor, and was in the actual poſſeſſion of the prize at the time of the ſeizure made by the libellants: that although the claimant made his ſeizure by virtue of the deputation of the naval officer, and under the act of aſſembly, in which indeed he was miſtaken in point of law, becauſe the act does not touch the veſſel, but the cargo only; yet being ſo poſſeſſed, he acquired a right which could not be injured by his error in judgment, and was good againſt any fellow-ſubject: that this right is founded on two principles, viz. *occupancy*, in the civil, and the doctrine of *remitter*, in the common law.

UNDER the firſt, it is ſaid, that goods belonging to an enemy, being out of the protection of the

law, may be conſidered as *bona vacantia*, and he who can firſt get poſſeſſion acquires a right in them by *occupancy;* and that this doctrine is the only foundation on which the right of capture is built: and, under the ſecond, that, where a perſon obtains peaceable poſſeſſion of property by an inſufficient title, having a more ancient and better title, the law will *remit* him to his better title, and conſider him as holding under that in preference. Both which doctrines are ſaid to apply in favour of the claimant in the preſent caſe, inaſmuch as he had poſſeſſion of the veſſel before the ſeizure made by the libellants and held her by *occupancy;* and that having a good right under the ordinance of congreſs to make prize of goods belonging to the enemy, and taken near the ſhore, although in fact he ſeized the ſame by virtue of his deputation from the naval officer, yet being ſo poſſeſſed, the law will not remit him to his better title.

On the contrary it has been urged—That when the claimant firſt went on board this veſſel, he ſtood in a two fold capacity, as a militia man of the country, and as the deputy of the naval officer, and that the rights and powers of theſe characters are as perfectly diſtinct in law as if they exiſted in two different perſons: that when he was aſked in which capacity he meant to act, he expreſsly *declared* that he made the ſeizure in behalf of the

naval officer: that when an agent ſo ſituate hath made his election, and afterwards finds himſelf in the wrong, he cannot have recourſe to his better power to confirm an act done by an inſufficient one: that Charles Phile, the preſent naval officer, ſeized the veſſel, but Charles Phile, the militia man, who muſt, in the eye of the law, be conſidered as a different perſon, did not exerciſe the power given him by the ordinance of congreſs, and made no capture in that capacity, and therefore the veſſel remained liable to capture by any militia man who ſhould think fit to make uſe of the right veſted in him by the ordinance, notwithſtanding he might find her in the poſſeſſion of the naval officer, or of his deputy, who, as ſuch, had no power to hold her under the act of aſſembly.

That Phile cannot claim by *occupancy* more than the two men who rowed him down the river, and went on board with him; and that the doctrine of *remitter* does not apply, becauſe the ancient and better right alluded to, was not a right peculiar to the claimant, but which every militia man in the country held in as full force as himſelf, by virtue of the ordinance of congreſs. And finally, that be that ancient right what it may, the claimant diſavowed and rejected it by his voluntary election, which throws the whole doctrine of remitter

out of the queſtion, which is ſo purely an operation of law under particular circumſtances, that the interference of the party is fatal to its effect.

The queſtion which firſt preſents in this cauſe is—Whether the ſeizure made by the claimant, as deputy naval officer, operated as a capture of the *veſſel* under the ordinance of congreſs or not? It is certain, that when Phile entered on board this brig, he was poſſeſſed of two diſtinct powers. By the one, derived from the act of aſſembly, he might have made a ſeizure of the cargo only; by the other, founded in the ordinance of congreſs, he might have taken as prize, both the veſſel and cargo. In this ſituation the claimant explicitly diſavowed and rejected his right under the ordinance, not only by words, but by unequivocal actions; and the law will not now force upon him a right ſo deliberately diſclaimed, to the excluſion of another claiming under the ſame right, formally and expreſsly exerciſed.

It is ſaid, that no advantage ought to be taken of the ignorance of the claimant on a ſudden emergency. But, beſides that his procuring a deputation from the naval officer, and going four miles down the river to execute his purpoſe, cannot be called a ſudden act, his ſubſequent conduct fully evinces a deli-

a deliberate determination of the right on which he meant to depend. He made the ſeizure in behalf of the naval officer, under the act of aſſembly, on the 27th of February, and held the property by that title, to the 10th of March following, during which time no libel or information was filed by him in the admiralty office, no ſhip's papers produced, nor the veſſel put by him into the marſhal's poſſeſſion, as a prize taken from the enemy. Theſe circumſtances operate ſtrongly againſt the claimant's being conſidered as a captor under the ordinance of congreſs.

But further, even ſuppoſing him to have been the firſt and real captor of this veſſel and her cargo under the ordinance, there yet remains a legal obſtacle to his enjoying the prize; ſince whatever right he might have acquired as a captor, he forfeited it by his ſubſequent conduct. In the admiralty law of this ſtate (p. 314) it is enacted, "If "any perſon who ſhall have charge of, or bring a "prize into this port, ſhall neglect or refuſe to de- "liver up the ſame to the marſhal of the court of "admiralty, and libel her within three days after "her arrival, ſuch perſon ſhall forfeit all his inter- "eſt in the ſaid prize to the uſe of the common- "wealth, and be ſubjected to the penalties of con- "tempt," &c. &c. It is evident, therefore, that

the claimant did not conſider himſelf as the captor of a prize, till after the libel filed by Pringle and Sheé, otherwiſe he would have taken care to comply with the injunctions of the admiralty law.

As to the doctrines of *occupancy* and *remitter*, if they operated at all it muſt have been at the moment the claimant firſt entered on board this veſſel; and if ſo, why does he not libel for the cargo as well as the veſſel? But I am of opinion that no force can warp thoſe doctrines to fit the preſent caſe.

JUDGEMENT in favour of the libellants.

DIXNEUF *verſus* LACAZE.

Libel for wages.

A Parole contract was made at Cadiz, between captain Sherribeau, maſter of the ſchooner *Neceſſity*, and Dixneuf, the libellant, to this purport—that if Dixneuf would enter on board, and ſerve as mariner and carpenter, he ſhould have the ſame

wages

wages with the other mariners on board, and ſhould be at liberty to leave the veſſel on her arrival at Philadelphia, or to return with her to Cadiz, at his option: that if he ſhould not chooſe to return with the veſſel, he ſhould be paid mariner's wages for the time he had ſerved; but if he ſhould engage at Philadelphia to complete the voyage, the captain would then pay him the ſame advance he had paid the reſt of the crew.

AFTER the ſchooner arrived at Philadelphia it ſeemed as if the libellant had made his election not to return with the veſſel to Cadiz, becauſe the captain was heard to deſire him to continue to work on board as carpenter, and promiſed to pay him the ſame wages the carpenters of the country received. Some difference ariſing afterwards between the captain and Dixneuf, the captain ſailed without ſettling with him for his ſervices. Whereupon Dixneuf now libels againſt Lacaze, one of the owners of the ſchooner *Neceſſity*, for his wages as mariner from Cadiz to Philadelphia, and for ſervices as carpenter in the port of Philadelphia.

JUDGMENT, that the libellant ſhall have his wages as a mariner on board the ſchooner *Neceſſity* from Cadiz to Philadelphia, and that the bill be

diſmiſſed ſo far as hath reſpect to a demand of wages for work done as a carpenter in the port of Philadelphia.

(1781.)

MILLER

verſus

THE RESOLUTION.

A claim filed in behalf of the ſhippers of the cargo; alſo a claim in behalf of the owners of the ſhip.

THE ſhip *Reſolution*, belonging to Brandlight and Sons, merchants in Amſterdam, ſailed from the Texel on the 9th of January, 1780, bound for the iſland of St. Euſtatius. This voyage was interrupted by ſtreſs of weather, which obliged her to put into Liſbon, where ſhe remained ſome months to refit, but afterwards arrived at St. Euſtatius. From St. Euſtatius ſhe ſailed for the iſland of Dominica, where ſhe arrived on the 1ſt of October, 1780. In March, 1781, ſhe ſailed from Dominica for Amſterdam, with a valuable cargo of ſugar and coffee, ſhipped

ſhipped by ſundry perſons, certified to be *capitulants in the iſland of Dominica;* which cargo was conſigned to Meſſrs. Brandlight and Sons, of Amſterdam, the owners of the veſſel. Soon after the commencement of her voyage from Dominica, ſhe was captured by a Britiſh armed veſſel, and taken as prize into *Nevis*, where admiral Rodney examined her papers, and thereupon diſmiſſed her. She again proceeded on her voyage, but was afterwards captured by another Britiſh veſſel, from whom ſhe was re-captured by an American privateer; from this privateer ſhe was again taken by a Britiſh ſhip, and finally retaken from her by Peter Miller, the libellant in this cauſe, and ſent into the port of Philadelphia. It is not contended but that in each and every of the captures and re-captures, ſhe remained more than 24 hours in the poſſeſſion of the conqueror. Being thus found in the hands of the enemy, and taken from them by force of arms, the libellants pray that both ſhip and cargo may be condemned as lawful prize and booty of war.

ARGUMENT.

But it has been contended in behalf of the claimants—That it appears in teſtimony that the iſland of Dominica did on the 7th of September, 1778, ſurrender by capitulation to the marquis *de* Bouillé,

Bouillé, general of the French forces in the Windward Iſlands—that by the terms of this capitulation, all the property and eſtates in Dominica, with their produce were ſecured to the inhabitants, and protected from confiſcation; particularly by the 17th article, in theſe words—"The merchants of "the iſland may receive veſſels to their addreſs "from all parts of the world (Engliſh veſſels ex- "cepted) without their being confiſcated; and "they may ſell their merchandize, and may carry "on their trade, and the port ſhall be entirely free "for them for that purpoſe, paying the cuſtomary "duties paid in the French iſlands." And it is alledged, that this privilege and protection was extended to abſent perſons having property or concerns in the iſland, by virtue of the 9th article of the ſame capitulation in theſe words—"The ab- "ſent inhabitants, and ſuch as are in the ſervice "of his Britannic majeſty, ſhall be maintained in "the poſſeſſion and enjoyment of their eſtates, "which ſhall be managed for them by their attor- "nies." That theſe United States being in ſtrict alliance with the court of France, are bound by the terms of every capitulation, convention, or treaty, which the court of France, or any perſon or perſons under that authority, ſhall make in the courſe of the war, the war being a common cauſe, and both allies principals in the conduct of it:—

that

that it was alſo in proof, that the king of England, by his proclamation, dated in December, 1780, extended the effects of the capitulation of Dominica, to Dutch veſſels for four months, notwithſtanding the rupture between Great Britain and Holland, by the capture of St. Euſtatius: and, that this ſhip, under the ſanction of the ſaid capitulation which ſecured her and her cargo from capture by the French or Americans, and under the ſaid proclamation, which protected her from Britiſh capture, ſailed from Dominica, with the property of capitulants on board; and that the paſſport of monſieur *Duchilleau*, the French governor of Dominica, endorſed on the manifeſto of the cargo, ought to protect this property from being made prize of by the friends and allies of France.

It has been further inſiſted—That a re-captor acquires no other right than what the captor had; inferring that as the Britiſh captor could not have procured a condemnation (as appears by the acquital of admiral Rodney) neither can an American re-captor make this veſſel legal prize—that the Britiſh captain ſhould be conſidered as a pirate, and that the law is, that goods taken by pirates, and again retaken from them, ſhall be reſtored to the former owner—that if it ſhould be objected, that moſt of

the

the real conſignees of this cargo are not inhabitants of Dominica, and therefore not within the capitulation; it is anſwered, that article the 9th extends the operation of this capitulation to abſent inhabitants, even ſuch as are in the ſervice of the king of Great Britain having property in the iſland, whoſe buſineſs may be tranſacted by attornies; and that if the attorney is an inhabitant, and ſigned the capitulation, it is the ſame thing in effect as if the principal had done it. And, laſtly, that although no expreſs authority can be produced to prove directly that allies in war are bound by the capitulations, conventions, and treaties of each other, reciprocally; yet a ſtriking analogy may be found in the caſe of *ranſom*. That it cannot be denied, but that if a French veſſel takes a prize, and *ranſoms* her for a limited time, the ranſom bill would protect the property from capture and condemnation by the Americans. If, therefore, the act of an individual captain of a French privateer can ſcreen the property of an enemy from an ally, much more ſhould the ſolemn capitulation of a French general with the whole inhabitants of a captured iſland bind the ſame ally.

To this it has been replied; that the ſhip *Reſolution* and her cargo were found in the poſſeſſion of the enemy, who held the ſame by force as their

their property for more than 24 hours which brings the caſe ſtrictly within the ordinance of congreſs of February laſt, which excludes any claims of former owners after a poſſeſſion of 24 hours by the enemy: that we have no buſineſs to enquire by what right the enemy became poſſeſſed: it is ſufficient for us that we found it there: that the doctrine reſpecting pirates does not apply, becauſe the Britiſh as a ſovereign nation has an undoubted right to wage war, and to take prizes, which pirates have not: that if any ſubject of a ſovereign power takes unlawfully, let him or his prince anſwer the wrong, the re-captors at war with them being altogether blameleſs, whoſe right to take from an enemy cannot be doubted: that it appears evidently by the letters and other exhibits in this cauſe, that this cargo is in fact Britiſh property, and not the property of the inhabitants of Dominica; and although conſigned to merchants in Amſterdam, the nett proceeds were to be remitted to merchants in London, and other parts of the Britiſh dominion: that it is abſurd and untrue to ſuppoſe that the benefits of the capitulation were deſigned to extend to London merchants who had never been inhabitants of the iſland of Dominica, and who are and will remain Britiſh ſubjects, aiding, by their wealth

wealth and influence, in the war againſt France and her allies: that the captulation included only real inhabitants, either preſent on the iſland, or abſent on buſineſs at the time, and placed them in a ſtate of perfect neutrality with reſpect to the war; a character which can by no means be applied to the real conſignees of this cargo: that if the effects of this capitulation were to be thus extended, France would have obtained a conqueſt which can produce nothing but expence, trouble, and loſs to her, but will tend to ſtrengthen and enrich the enemy; and that it would be for the preſent, the intereſt of Great Britain to ſurrender all her Weſt-India iſlands upon the ſame terms.

It has been further urged by the counſel for the libellants, that allies are not mutually bound by every *ex parte* treaty or convention: that conſent is neceſſary to include one in the engagement made by the other; as for inſtance, in a truce or ceſſation of hoſtilities: that France does not deem herſelf ſo bound, is evident from her conduct with reſpect to Bermuda and the Bahama iſlands, whoſe property congreſs have exempted from capture and condemnation by Americans; yet their veſſels are confiſcated in the French

French courts of admiralty: and that this exemption, granted by congreſs to Bermudians, runs ſtrictly parallel with the terms granted by the French general to the people of Dominica, ſo far as allies in war were to be affected by ſuch treaties.

THAT the law reſpecting *ranſoms* cannot apply to the preſent caſe, becauſe, if, after our ally has made a capture, and diſcharged the prize on a promiſed ranſom, we ſhould violate the ranſom bill, we ſhould in fact plunder our friend of his actually acquired property; and it is for this reaſon that allies are bound by ranſom bills: that this caſe coming preciſely within the ordinance of congreſs reſpecting 24 hours poſſeſſion by the enemy, this court is bound to decree according to that ordinance, and hath no power to judge how far its operation may, or may not, under particular circumſtances, affect the terms of our aliance with France, the true limits of which are only to be aſcertained by the ſovereignty of the ſtates, and are not ſubmitted to the determination this court.

THAT, as to the paſſport ſubſcribed by monſieur *Du Challeau*, he did it as a matter of courſe in

conſequence of the depoſitions annexed to the bills of lading, which were taken by the Britiſh judge of the iſland, and who might probably be in the intereſt of the parties; or, at leaſt, that it was done with the official negligence too uſual in paſſing cuſtom-houſe papers. It was further ſuggeſted, that the manifeſt variance between the bills of lading, with their depoſitions annexed, and the private letters of advice found on board; the direct fraud manifeſt in ſome of thoſe letters, and the myſterious complexion of others, are alone ſufficient to juſtify a condemnation of this property; double papers and fraudulent clearances being legal cauſe of confiſcation.

In ſhort, that this whole buſineſs appears to be a mercantile ſcheme concerted between Britiſh merchants and Brandlight and Sons, of Amſterdam, in conjunction with the ſhippers at Dominica, to impoſe on the French governor, and to derive an unfair advantage from the liberal terms of the capitulation: that, if this property is to be deemed *neutral*, the true doctrine is, if a neutral voluntarily puts his property on board an enemy's ſhip, he does it at his own riſk; but if an enemy unjuſtly takes neutral property, and the ſame is retaken, the remedy is againſt the enemy who did the wrong, and not againſt the recaptor who only did his

his duty: that it is true, that the paſſport of governor *Duchalleau*, recommends this veſſel to paſs unmoleſted by the friends of France, but does not ſay ſhe ſhall not be taken from the enemy in caſe ſhe ſhould fall into their hands: that if the inhabitants of Dominica, in their preſent ſituation, be conſidered either as French or as Britiſh ſubjects, ſtill the recapture is good; if French, then the property (ſuppoſing it to belong to the ſhippers) having been more than twenty four hours in the poſſeſſion of the enemy, is prize to the recaptor by the marine ordinances of France and America; if Britiſh, it belonged to the enemy, and is therefore prize. And laſtly, that this capitulation ſhould not be conſtrued to extend further than the protection of property upon the iſland, and within its ports and harbours, but cannot reaſonably be expected to inſure ſafety on the high ſeas in the midſt of a raging war.

JUDGMENT.

THIS cauſe, ſo far as it reſpects the cargo of the ſhip *Reſolution*, reſts principally on one queſtion, viz. whether the United States by their alliance with France, are, or are not to be conſidered as parties in the capitulation made by the Marquis De Bouillé with the inhabitants of Dominica.

minica. No authority has been produced, and I believe that none can be, to ſhew that allies are mutually bound in all caſes. It is manifeſt, that it is not generally ſo underſtood; becauſe it is uſual in forming treaties of alliance to inſert ſpecial clauſes ſpecifying thoſe caſes, wherein the promiſes and engagements of the one ſhall bind the other: for it would be a very dangerous doctrine that ſhould bind ſovereign powers in engagements to which they had neither expreſsly or implicitly given conſent, or that one ally ſhould neceſſarily become a party in the conventions which the generals and officers of the other may, under particular ſtraits and circumſtances, make with the common enemy, unleſs the ally be mentioned in the convention, and the terms thereof be afterwards acceded to by him. Thus, in the caſe of Dominica, had governor Stuart, when he ſurrendered the iſland to the marquis de Bouillé expected that the United States ſhould be bound by the terms of the capitulation, he would have made this one of the articles, and not entruſted ſo important a point to a ſpeculative queſtion, how far one ally may or may not be virtually bound by the engagements of the other. This, however, he has not done, either becauſe it would imply an acknowledgment of the ſovereignty of the United States, or becauſe he deemed the objects of the capitulation to be limited

mited to property within the iſland. Be this as it may, the Britiſh could not reaſonably complain that the French had violated the articles of the capitulation ſhould the Americans take the goods of the inhabitants of Dominica found upon the high ſeas, becauſe ſuch an aſſurance made no part of the ſtipulation. "If he who can and ought to "have explained himſelf clearly and plainly, has "not done it, it is the worſe for him; he cannot "be allowed to introduce ſubſequent reſtrictions "which he has not expreſſed." Vattel, B. 2. ch. 17. ſec. 174.

But whatever doubts there may be of the right of Americans to take the property of the people of Dominica under the preſent circumſtances, there can be none of taking Britiſh property, wherever found, without any danger of impairing the friendſhip of our good ally. And from a ſcrutiny of the papers found on board this veſſel, there is ſtrong reaſon to believe that this cargo, however artificially covered, is, in fact, Britiſh property.

As to the general doctrine reſpecting allies, the caſe of Bermudas is, I think, ſtrong in point. The veſſels of that iſland were by congreſs exempted from capture by Americans, and yet the French

made prize of them whenever they could; nor was it ever ſuggeſted, that they had thereby violated the faith of the alliance. Had the Britiſh expected, or France deſired, that the United States ſhould be parties in the capitulation of Dominica, it cannot be doubted, but that this would have been made one of the terms of that capitulation, or that France would, e'er this, have ſignified her deſire to congreſs, and that congreſs would have inſtructed the maſters of privateers as to this matter.

HAVING made no national agreement to ſpare the property of the people of Dominica, when found on the high ſeas, much leſs are we bound to reſcue it from the hands of an enemy at our riſk and expence, in order to reſtore it, ſalvage free, to their uſe. This would be to put them on a better footing than our own merchants, whoſe property, after 24 hours poſſeſſion by the enemy, would be confiſcated to the re-captor, whereas it is contended that no confiſcation whatever ſhould paſs on the property of the people of Dominica.

BEING fully ſatisfied as to this general point, it renders a minute diſplay of the ſtriking contradictions between the bills of lading and letters of advice, and other papers found on board this veſſel, the leſs neceſſary. Many of them are manifeſtly frau-

fraudulent; and although the property is carefully wrapped in neutral covers, the nett proceeds appear to be finally intended for ſubjects of Great Britain, reſiding at London or elſewhere.

WITH reſpect to the king of England's proclamation, I conceive that it is founded on partial, not on general grounds. Were it not that this, with four or five other Dutch veſſels were at this time to ſail from Dominica, freighted with the property of Britiſh merchants, it is more than probable that this proclamation had never been publiſhed.

I adjudge that the cargo of the ſhip Reſolution be condemned as lawful prize to the libellants; and that the ſhip Reſolution, with her tackle, apparel and furniture be reſtored to Brandlight and Sons, merchants of Amſterdam.

N. B. The claimants appealed from this decree; and, after long argument, the judges of appeal reverſed the decree, ſo far as the ſame reſpected the condemnation of the cargo, which they fully acquitted, upon the ſhippers paying freight to the owners of the ſhip.

THERE was afterwards a re-hearing of this cauſe before the court of appeal, on a ſuggeſtion

of new teſtimony having been found amongſt ſome papers taken in a ſhip (the Erſten) bound from Oſtend to Dominica: but the court adhered to their judgment; except only as to ſome part of the cargo, which was condemned on account of irregularities in the bills of lading, and letters of advice, reſpecting thoſe particular articles.

CASSEN

verſus

THE TRISTRAM SHANDY.

CASSEN, commander of the privateer ſhip *Riſing Sun*, ſailed from the Delaware, in company with the ſloop *Jane*, commanded by Samuel Young, the claimant: the ſloop being under convoy of the ſhip. Both veſſels belonged to the ſame owners (one perſon excepted, who had a ſhare in the ſloop, but was not concerned in the ſhip.) The ſhip was bound on a cruiſe, as a privateer, and the ſloop on a trading voyage. Whilſt

theſe

theſe veſſels were yet in company, they diſcovered the brig *Triſtram Shandy*, a veſſel belonging to the enemy, and got to windward of her. The ſhip then bore down upon, and took the prize; but the ſloop, without changing her courſe, proceeded on her voyage. It is alſo in evidence, that the ſloop was obſerved by the crew of the prize, eight or ten minutes before ſhe ſurrendered, at the diſtance of about ſix miles. Whereupon, the owner, who is ſingly concerned in the ſloop, has filed a claim, in the name of Samuel Young, *qui tam*, for a ſhare of the prize, as being in ſight at the time of the capture, under the general rule of law.

AGAINST this claim it has been urged, that the ſloop ought to have no ſhare in this prize, becauſe it is in teſtimony, that ſhe not only did nothing towards the capture, but, in fact, avoided it, not altering her courſe, or manifeſting the leaſt intention to be conſidered as a joint captor; inſiſting, that an intention to poſſeſs is requiſite to the acquirement of property—that although by the rule of law, it is not neceſſary to enquire how far a veſſel in ſight, did or did not contribute to the capture of a prize, yet ſome attempt, ſome inclination, to take, ought to appear, otherwiſe the law will not force property on thoſe who voluntarily abandon it; and

the caſe of *Rice* verſus *Taylor* was particularly referred to, and relied upon. (Vide p. 16.)

ARBITRARY rules and preſumptions of law are eſtabliſhed in profound wiſdom, and are the reſult of much experience. Paſſing by the uncertain equity of certain caſes, they look only to general juſtice. All that is neceſſary in the application of them is to aſcertain whether the caſe comes within the rule or not. If it does, the rule ought not to be violated, nor ſhould any evidence be admitted to defeat its operation; becauſe the law, delighting in certainty, will not ſuffer an inveſtigation which can occaſion contradictory teſtimony, perjury, and endleſs litigation.

IN the caſe of *Rice* verſus *Taylor*, the *jury found* that the claimant's veſſel did not, by her preſence, contribute to the ſurrender of the prize; her ſituation rendering it in fact impoſſible; and, therefore, the claim was diſmiſſed, the caſe not coming within the verge of the legal preſumption. But no ſuch impoſſibility appears in the preſent caſe. Had the enemy been a match for the ſhip, or made an obſtinate reſiſtance, the ſloop was ſufficiently near, and in a capacity to join her force. But as the prize was not able to maintain a conteſt with the ſhip, it is to be preſumed that the ſloop's continuing

tinuing her courſe, was not an abandonment of any ſhare or concern in the prize, but becauſe that ſhe ſaw that her aſſiſtance was altogether unneceſſary.

THE ſuppoſed want of an intention to take, is not ſufficient to exclude the claimants from a ſhare of the prize. The claim filed in this cauſe is proof of at leaſt an intention to poſſeſs whatever the law may award. And although it has been ſuggeſted, that this ſuit is in fact brought by one of the owners, in the name of the captain and crew of the ſloop Jane, who are abſent, and had no intention of making ſuch claim, yet the court will not allow the diſtinction, but conſider captain Young and his mariners as proſecuting their ſuit by their proctor.

NEITHER is there any reaſon why the circumſtance of the ſloop's being under the convoy of the ſhip, ſhould affect the right of the claimants. The aſſiſtance which one veſſel may give another in battle is the reaſon of the law, and this reaſon is as applicable to veſſels under convoy as to any others. Whenever two veſſels of the ſame nation are in company, they are under reciprocal protection, and mutually bound to aſſiſt each other: but when a veſſel of ſuperior force fails out of her intended courſe, or is purpoſely ſent for the protection of another, the owners of the latter ſhould make

recom-

recompence for the ſervice; but this will not exclude the protected veſſel from thoſe rights which her force, ſmall as it may be, may entitle her to, and which the general rule of law aſſigns without diſtinction.

JUDGMENT.

THAT the Triſtram Shandy be condemned as lawful prize to the captors; and that the claimants have a ſhare of the ſaid prize, in proportion to the men and guns on board the ſloop Jane at the time of the capture.

ROBESON *verſus* THE AMELIA.

THE brig Amelia ſailed from Charleſtown, then in the poſſeſſion of the enemy, *as a flag of truce*, to the city of Philadelphia. After her arrival ſhe began to unlade ſundry goods and merchandizes: the libellants conſidered this as a violation of the flag,

flag, and accordingly libelled againſt her in the court of admiralty.

JUDGMENT.

THAT ſhe be condemned as lawful prize.

NICHOLAS HAINEY

verſus.

THE TRISTRAM SHANDY AND DIMSDALE.

A Libel for Prize Money.

HAVING entered as a landſman on board the privateer *Riſing Sun*, and ſigned articles for a cruiſe of four months: the privateer was ſucceſsful; and the libellant was ſent in with one of her prizes, and ſoon afterwards fell ſick. During the cruiſe the *Riſing Sun* came into port to refit. Being at Philadelphia, a great part of the crew left her;

her; whereupon the captain (or owners) publiſhed an advertiſement, calling upon the officers, ſeamen, and mariners, belonging to the *Riſing Sun*, to repair on board by a certain day, in order to complete the cruiſe. One third of the crew, however, neglecting to appear, the owners and officers agreed to break up the cruiſe, opened a new rendezvous, and enliſted a crew under a new ſet of articles. The ſhip ſailed on this ſecond cruiſe, the four months of the firſt having not yet expired. Soon after her laſt ſailing ſhe captured the Triſtiam Shandy, and the Dimſdale, both which were condemned as prize. It appeared in teſtimony, that the Triſtiam Shandy was taken before the expiration of the firſt cruiſe, and the Dimſdale ſome days after. The libellant did not appear on the day advertiſed, neither did he ſign the ſecond ſet of articles, being ſick at the time.

As this cauſe touches a general doctrine, viz. how far owners are juſtifiable in breaking up a cruiſe, without the conſent of all concerned, it wears a face of conſiderable importance. I have attended to it in this view, and am of opinion, that ſhipping articles form a contract between the owners on the one part, and the officers and crew on the other, and are for the period ſpecified, in full

full force with reſpect to the contracting parties. And this contract is not made with the officers and crew as an aggregate body, but with each mariner individually. Upon this ground, I think the contract cannot be totally diſſolved (as hath been contended) by the will of any majority on either ſide, however great. If a ſingle mariner withholds his conſent, and the cruiſe is broke up by the reſt of the concerned, and a new cruiſe commenced, as in the preſent caſe, this muſt be done, ſubject to the legal claim of the unconſenting mariner, of wages or prize money that may accrue during the term of the firſt cruiſe for which he contracted. If it were otherwiſe, if owners could for their own convenience, or from an apparent or real neceſſity, break up a cruiſe, thoſe of the crew who may be languiſhing in captivity, or may be confined on ſhore by wounds or ſickneſs incurred in the ſervice of the ſhip, or otherwiſe, might be excluded from the advantages of a period of time for which they had engaged to run all hazards, and of which they may as yet have only experienced the misfortunes.

JUDGMENT.

THAT the libellant have a landſman's ſhare of the

the prize brig, Triſtiam Shandy, and that the bill be diſmiſſed with reſpect to a ſhare of the Dimſdale.

M'GEE *verſus* THE FANNY.

JACOB Miller, and others, had formed a compact to purchaſe a veſſel, load her with proviſions, naval ſtores, &c. and then clear her out from the port of Philadelphia, as for ſome legal voyage; but, in fact, to take her into New York, for the ſupply of the enemy. The Fanny was purchaſed for this purpoſe. But, before the ſcheme was ripe for execution, one Hollingſhead, who was to have been ſailing maſter for the voyage, divulged the ſecret. In conſequence of which the libellant ſeized the veſſel at the wharf where ſhe had lain previous to the time when Miller purchaſed her for the purpoſe aforeſaid. One Riggens, who was alſo privy to the plan, confirmed the teſtimony of Hollingſhead, as to the general ſcheme.

At

At the time of the ſeizure, the brig had taken in only twenty barrels of Tar, and had not yet ſhipped her mariners.

THE teſtimony in this cauſe amounts to no more than a treaſonable intent. Had this veſſel received her cargo on board, ſhipped her mariners, and hawled off from the warf, the intent would then have been ſo far carried into execution, as that the veſſel and cargo might have been confiſcated, and the parties puniſhed under the ordinance of congreſs. As the caſe ſtands, the owners might have changed their minds as to the general deſign, or they might have thought ſome other veſſel more ſuitable to the purpoſe. To bring the matter properly before this court, the identical veſſel employed in an illegal deſign muſt be taken in the fact, for the admiralty cannot confiſcate one veſſel for the fault of another although belonging to the ſame owners. A veſſel cannot be ſaid to be taken in purſuit of an illegal voyage whilſt ſhe remains faſt at a wharf, without a cargo on board, and without mariners.

LET the bill be diſmiſſed.

WILLIS

WILLIS *verſus* THE BRIG YORK.

THE queſtion before the court was, Whether the right of a deceaſed mariner to a ſhare of prizes taken during a cruiſe, is inheritable or not? The caſe was: one Joel Willis enliſted on board a privateer for a certain cruiſe: A ſhort time before the determination of the cruiſe, according to the articles, he fell ſick, and died on board the privateer. Soon after his death, and within the the term of the cruiſe, the prize brig York was taken. Whereupon Seth Willis, the brother and adminiſtrator of Joel, libelled for a ſhare of the prize.

THE arguments of council reſpected the general principle of law; but the judge, not willing to determine the general queſtion, directed teſtimony to be exhibited on the particular circumſtances of the caſe. This was done, and the cauſe ſubmitted, without further argument, to a deciſion on the equity and merits of the caſe.

WHEREUPON a ſhare of the prize was adjudged to the adminiſtrator.

GIBBS *verſus* THE TWO FRIENDS.

THE brig *Suſannah*, belonging to George Gibbs, cleared out from the naval office in the port of Rhode Iſland, and ſailed with a cargo on board, as for Hiſpaniola, but in fact for Turk's Iſlands. Being on her voyage ſhe was diſcovered, purſued, and captured by Joſiah Crane, maſter of the brigantine *Two Friends*, belonging to ſubjects of the United Netherlands, and furniſhed with letters of marque and repriſal againſt the ſubjects of the king of Great Britain. Holland had not at this time entered into any treaty with, or acknowledged the independence of, the United States of America. Captain Crane took out part of the crew of the Savannah, and put a prize maſter on board, and ordered her for Philadelphia; but the Suſannah was again captured during her voy-

age

age to Philadelphia by a Britiſh privateer, taken to New York, and there condemned. The *Two Friends* arrived at Philadelphia, where Gibbs the owner of the Suſannah libelled againſt her, and againſt captain Crane for reparation of the loſs and damage ſuſtained.

In conſidering this caſe, two obvious points preſent, viz.

First. Hath the brig Suſannah ſo offended by her intended voyage to Turk's Iſlands as to afford probable cauſe of capture and confiſcation?

Secondly. If not, who ought to ſatisfy the owner for the loſs of his veſſel and cargo?

On the firſt point the queſtion occurs, whether Turk's Iſlands, may, or may not, be conſidered as property under the dominion of Great Britain? Whatever might have been the ſituation of theſe iſlands in the years 1778 and 1779, it is evident that at preſent they are abandoned by every nation, there having been no officer who hath exerciſed civil or military powers there under the authority of any government whatever for at leaſt theſe two years paſt. If the Britiſh ever had legal dominion over theſe iſlands, they have a-

bandoned their right, and releaſed the inhabitants from all allegiance by withdrawing all protection. So that thoſe people may truly be ſaid to be in a ſtate of nature, unleſs they have formed ſome government of their own. What offence then can ariſe from trading with thoſe iſlands? It is plain, from the clearances and entries in our own naval offices, that this trade hath not been deemed unlawful: and it is alſo in evidence, that American, French, and Spaniſh veſſels, conſtantly go to theſe iſlands for ſalt, and no body hath heretofore queſtioned the legality of this commerce.

But is ſaid, that the variance between the office clearance and an invoice found on board, marking the real deſtination of the voyage, affords probable cauſe of capture, and even a ſufficient ground for confiſcation. I find, however, that it is not an unuſual practice for merchants to clear out as for one legal port, but with a deſign of going to ſome other legal port, in order to conceal the real voyage, for mercantile purpoſes. Nor hath this practice ever been deemed an offence, or the papers found on board a veſſel under ſuch circumſtances been conſidered as double papers, ſuch as ſhould induce a condemnation.

THE next queſtion is, Who ought to be anſwerable for the injury done? the captain, or his owners, or both?

THE relation between the owners and maſter of a veſſel hath, to many purpoſes, been conſidered as that of maſter and ſervant; and the law is clear, that the maſter is bound by whatever the ſervant doth by his order, under his authority, or in the proſecution of his ſervice. See 1ſt. Black. 429. It has been contended, however, that captain Crane was not in the proſecution of his owners ſervice when he made this capture, the object of the voyage being merely mercantile, and not to take prizes. But as this veſſel was duly commiſſioned to take prizes, and the owners and captain would have ſhared the produce of a legal capture, this diſtinction cannot be admitted, but the owners and captain muſt be conſidered as jointly anſwerable.

JUDGMENT in favour of the libellants for £ 1305 ſpecie, with coſts.

N. B. An appeal, and the judgment confirmed.

CLINTON

CLINTON

verſus

THE BRIG HANNAH AND SHIP GENERAL KNOX.

A Plea to the juriſdiction of the court was filed in this cauſe: and the queſtion was, Whether a *Ship-Wright* might ſue in the admiralty for his contract wages for building a ſhip or veſſel deſigned for navigation on the high ſeas?

AFTER long argument, the judge gave his opinion as follows.

THE authorities which the libellants have urged in favour of the juriſdiction of this court, in the preſent caſe, are Cro. Ch. 296. and 1ſt Rolle 533. All the other authorities adduced having reference to thoſe, except one in 1 Stra. 707.

IN the firſt edition of Cro. cha. page 296, we find reſolutions upon caſes of admiralty juriſdiction

ſubſcribed by all the judges of both benches, in April, 1632. Wherein, amongſt other things, it is reſolved, that a ſhip-wright may ſue in the admiralty, provided his ſuit be againſt the ſhip. *Rolle*, as a faithful abridger, gives the law as it then ſtood under the authority of theſe reſolutions. In article 19, he mentions the doctrine reſpecting ſhip-wrights, and cites the caſe of *Taſker* and *Gale*. And in article 21, he gives the law reſpecting charter parties, adding theſe remarkable words: "As it was declared by the "court to have been lately reſolved by all the "judges of England." So that thoſe reſolutions ſeem to be the only foundation upon which theſe doctrines reſt. And it is very obſervable, that although *Croke* records the reſolutions as they were ſubſcribed in Hillary term, the eighth of Charles, yet he does not report the caſe of *Taſker* verſus *Gale*, although adjudged (according to *Rolle*) in the ninth of Charles, which muſt have been but a few months after. Neither hath any other reporter of that period noticed this caſe. From which it ſeems probable, that thoſe reſolutions, and the judgment in the caſe of Taſker verſus Gale, were not admitted as good law even in that day.

BUT it is further obſervable, that when *Sir Harbottle Grimeſtone* publiſhed Croke's reports in the year 1657, he prefixed, even to this firſt edition, a declaration under the title *Mantiſſa*, that the reſolutions of the judges in Feb. 1632, were not of authority: and for this reaſon (according to Comyns) thoſe reſolutions were totally omitted in the ſubſequent editions of that work. Since that time no inſtance can be found in the books, where either theſe reſolutions, or the caſe of Taſker verſus Gale adjudged thereupon, have been referred to either by the court, or in the pleadings in any adjudged caſe, except in the caſe of Wooward verſus Bonithan, Sir. T. Raymond. p. 3: and there the court declared, that thoſe reſolutions had been denied by ſeveral judges, and renounced by even ſome of thoſe who had ſubſcribed them. And of this, *Danvers* alſo takes particular notice, p. 271. Therefore the authority of theſe reſolutions ſeems to have been aboliſhed by general conſent.

BUT another caſe has been referred to as authority in point, viz. 1ſt Stra. 707. The report is very ſhort, and in theſe words: "On a motion "for a prohibition, it was held, that a *carpenter* "may ſue for wages in the admiralty." This report, however, is too ſlight and ſolitary to au-

thoriſe a deciſion contrary to general eſtabliſhed rules. The word *carpenter* doth not preciſely indicate a ſhip-wright, but may be applicable to a mariner on board a veſſel; and as the caſes referred to in the margin of this report, reſpecting the officers of a ſhip who ſued in the admiralty as mariners, the probability is, that this alſo was an officer called the *ſhip's-carpenter*: A doubt having ariſen whether the ſubordinate officers of a ſhip, as well as the maſter, were not prohibited from ſuing in the admiralty for wages.

If the reſolutions of the judges in 1632, and the deciſion in the caſe of Taſker verſus Gale, were admitted as law, and if the carpenter mentioned in 1ſt Stra. 707, was the ſhip-wright or builder, how is it poſſible that the judges ſo lately as the 1765, ſhould declare in court, that no inſtance could be found where both the contract and ſervice were to be done on land, within the body of a country, that the common law courts ever permitted the admiralty to have juriſdiction? I refer to 2d *Wilſon*, p. 265: and this opinion was given in the caſe of a pilot ſuing for ſervices done, indeed within the body of a county, but in a caſe of a much ſtronger maritime complexion than the preſent.

THERE are ſeveral exceptions to the general rules of law reſpecting admiralty juriſdiction, as aſcertained by the ſtatutes: ſuch as ſuits for mariners wages, and on hypothecations made by the maſter in foreign parts, &c. &c. which have been ſo often conteſted, and ſo often allowed, for good and weighty reaſons, that they have become confirmed law, and it would be in vain now to oppoſe the general rule to the general practice. But this does not appear to the caſe with reſpect to ſhip-wrights; neither are the ſame reaſons applicapable to them. Their contract is made with perſons whom they know, or ought to know; their ſervices are all executed within the body of the county, and moſtly on dry land above high-water mark; their wages have no reference to a voyage performed, or to be performed; the ſhip-wrights have no intereſt or concern whatever in the veſſel after ſhe is on float, and the merchant hath paid for her; and laſtly, the practice of former times doth not juſtify the admiralty's taking cognizance of their ſuits.

LET the bill be diſmiſſed, as not being within the juriſdiction of the court.

PIERRE.

PIERRE DE MOITEZ

verſus

THE SOUTH CAROLINA.

ON a plea to the juriſdiction, it was adjudged, that mariners enliſting on board a ſhip of war, or veſſel belonging to a ſovereign independent ſtate, cannot libel againſt a ſhip for wages due.

KEMP

verſus

THE EXPERIMENT.

THE ſchooner Experiment belonging to ſubjects of the United States; was on her voyage from James

James river, in Virginia, to Baltimore, in Maryland, with a cargo of rum and ſalt, and a few barrels of tar; the cargo being alſo the property of ſubjects of the United States. She was taken in Cheſapeak bay by ſome of the enemy's boats, called refugee boats, and ſent under the command of a prize-maſter to New York. In her way to New York, ſhe was re-captured by the libellant, and ſent into this port, having been ſeveral days in the poſſeſſion of the enemy.

On the trial, one of the owners of the cargo appeared, and urged the tenor of an ordinance of congreſs, paſſed the 26th of February, 1782, in his favour, reſpecting the veſſels and cargoes of ſubjects of the United States, going from one port to another, and taken within any arm of the ſea, &c. laden with the produce of the country, and afterwards retaken by a fellow ſubject: ordaining, that the ſame ſhall be reſtored to the firſt owner, on payment of reaſonable ſalvage, not exceeding one fourth of the value, without any regard to the time of poſſeſſion by the enemy. But as it appeared, that the cargo was foreign produce (except only two barrels of tar) the party withdrew his claim.

AND ſo the veſſel and cargo were condemned as prize to the libellant.

PATRICK MAHOON, & ALI.

verſus

THE LADY MARGARET.

PATRICK Mahoon, and twenty-four others, filed a ſupplimental libel againſt the ſhip Lady Margaret, for that they having duly enliſted for a cruiſe, on board the privateer *Holker*, and being ready and willing to perform their duty, were forcibly turned on ſhore by Roger Kean, the captain, and prohibited from going the cruiſe, in which the prize ſhip Lady Margaret was taken. Whereupon proceſs iſſued againſt captain Kean, *et contra omnes*, to anſwer to the ſaid libel.

THESE are the ſame libellants who recovered againſt the Gloceſter, two years ſince, on a like plea.

plea. (Vide p. 55.) In the caſe of the *Gloceſter*, the council for the reſpondent did not minutely inveſtigate the facts: but admitting the teſtimony, as produced on the part of the libellants, reſpecting the force uſed, reſted the defence ſolely on points of law. The facts were now more ſtrictly ſcrutinized, and new teſtimony adduced, amongſt which the reſpondent preſented the depoſition of Silas Foſter, one of the Holker's crew: but it was objected, that Foſter was an intereſted witneſs, and that his teſtimony ought not to be admitted. After full argument thereupon, the judge decided this point, as follows;

THE queſtion under conſideration, reſpects the competency of a witneſs produced by the reſpondent in this cauſe. On the one ſide, a general principle of law hath been urged, viz. that a perſon intereſted in the event of a cauſe, ſhall not be allowed to give teſtimony in that cauſe: and, on the other, an exception to this general rule, viz. that if no further or better evidence can be had, an intereſted party may and ought to be heard, from the neceſſity of the caſe, his intereſt only affecting his credibility, not his competency. And the danger of an unhappy precedent in the rejection or admiſſion of the witneſs now offered, hath been ſufficiently enlarged upon on both ſides. But

I can-

I cannot ſee the danger apprehended, ſince the determination in the preſent caſe, can be no rule for any other, unleſs the circumſtances of both ſhould be preciſely ſimilar; becauſe, the court will always take into conſideration the degree and nature of the intereſt, that ſhould exclude a witneſs under the general rule, and the reality of the neceſſity to admit him under the exception, and alſo judge of the credibility, according to circumſtances. To this purpoſe I refer to laws of *niſi prius*, p. 286. "Scroggs, ch. juſ. ſaid, that it ought "not to be a general rule, that members of corpo- "rations ſhall be admitted or denied to be witneſſes, "in caſes for or againſt their corporations: but "every caſe ſtands upon its own particular cir- "cumſtances, viz. whether the intereſt be ſo con- "ſiderable as by preſumption to produce partiali- "ty or not. And this exception has of late years "been much extended. In the caſe of the *King* "verſus *Bray*, lord chief juſtice Hardwicke * ſaid, "that unleſs the objections appeared to him to "carry a ſtrong danger of perjury, and ſome ap- "parent advantage might accrue to the witneſs, "he was inclined to let it go to his credit only, in "order to let in a proper light to the caſe, which "would otherwiſe be ſhut out."

In

* Hardwicke, p. 360.

In order, therefore, to decide on the competency of the preſent witneſs, it will be neceſſary to take a view of the circumſtances of the caſe, ſo far as they reſpect him, or his intereſt, in the cauſe.

The ſhip Lady Margaret, was, by a decree of this court, condemned as prize to the captors. The marſhal, after making ſale of the property, advertiſed as uſual for all perſons who had any claim thereupon, to appear in perſon, or by agent, and receive their reſpective ſhares. *Foſter's* agent accordingly appeared, and received his ſhare, which was afterwards paid over to him, as appears by his receipt to the ſaid agent. The preſent libellants iſſued no prohibition to the marſhal, to ſtay his proceedings, nor intimated any deſign of claiming ſhares in this prize. The marſhal, therefore, went on and completed his buſineſs, with reſpect to this veſſel and her cargo, and filed his accounts and returns, dated Feb. 1781, in the regiſter's office; by which accounts it appears, that full diſtribution had been made. The preſent libellants having recovered in the caſe of the brig Gloceſter, a prize taken by the ſame privateer, and in the ſame cruiſe in which the Lady Margaret was captured, now claim ſhares in the Lady Margaret alſo, upon the principles of the former deciſion in their favour. The captain of the privateer

hath

hath filed his anſwer in oppoſition to this claim, and offers *Foſter* as witneſs in his behalf: but it is alledged that *Foſter* may have an intereſt in the event of this cauſe, upon a ſuggeſtion, that although the marſhal hath in his returns, fully balanced his accounts reſpecting the Lady Margaret, yet he hath done it wrongfully, by charging extravagant and illegal commiſſions, as appears upon the very face of his returns. So that there is in fact a part of that prize yet in his hands, a diſtributive ſhare of which *Foſter* will be entitled to, if the libellants ſhould fail in their ſuit, he being one of the captors of that prize.

It ſeems then, that *Foſter*'s intereſt depends upon two contingencies—Firſt, that the libellants ſhall fail in their preſent claim: and, ſecondly, that the marſhal ſhall not be able to juſtify the commiſſions he hath charged.

If this intereſt depended upon the firſt contingency only, it might be deemed too cloſely connected with the event of this cauſe, to admit him as a witneſs of full credibility: but when the nature of the ſecond contingency is conſidered, viz. that it is now full two years ſince the marſhal made his returns, and that neither Foſter, nor any of the concerned, have objected to the commiſſions charged

ed, or manifeſted any expectations of receiving further advantages from the Lady Margaret, his intereſt, if any, ſeems to be ſo very remote, as not to *found any reaſonable preſumption that it will produce partiality, or to carry a ſtrong danger of perjury.*

THE uſe of teſtimony, is to aſcertain truth, that juſtice may be adminiſtered. Therefore, witneſſes ought not to be rejected on ſlight grounds of diſability, or on mere ſuggeſtion of a diſtant intereſt, eſpecially in maritime ſuits, where from the ſcene of tranſaction, a totally diſintereſted teſtimony can ſeldom be procured. But the court will always make allowance in the credit, according to the circumſtances.

LET Foſter's teſtimony be admitted.

JUDGMENT ON THE MERITS.

IN order to determine this cauſe to my own ſatisfaction, I find it neceſſary to ſtate and conſider three points, which will, I apprehend, include all the principles that can affect this controverſy.

THE *firſt* queſtion is, Whether thoſe who ſign the *Holker's* articles, after notice given that her

compliment of men was full, and that no more could be received on board, and who did not go the cruiſe, although their not going ſhould be occaſioned by a forcible rejection, ought to draw ſhares of all, or any of the prizes taken in that cruiſe?

It appears by the depoſition of Henry Martin, the keeper of the houſe of rendezvous, that although Fletcher, one of the Holker's officers, informed many who applied that they could not be admitted, becauſe the privateer's compliment of men was complete, and that they would be turned on ſhore if they came on board, yet they perſiſted to ſign the articles, and even took the advantage of the officer's turning his back to ſign thoſe articles without his knowledge, ſaying, they would run their chance. If any of the libellants ſhould be found in this predicament, I ſhall not heſitate to diſmiſs their claim. Becauſe no man ought to have an engagement forced upon him: mutual conſent, expreſſed or implied, being neceſſary to every contract.

The *ſecond* queſtion is, Whether thoſe who regularly ſigned the articles, or were duly enliſted by parole-agreement before the veſſel's crew was complete, and againſt whom no breach of duty is

alledged, but were turned on ſhore againſt their will, and did not go the cruiſe, ſhould have ſhares of the prize taken in that cruiſe.

But this point hath been ſo fully eſtabliſhed in favour of the libellants, in this court and in the court of appeals, that it cannot be controverted now. *

The *third* queſtion is, Whether parties under the circumſtances laſt mentioned, being preſent, and ſuffering the marſhal to ſell and diſtribute after public notice given, any prize or prizes in which they might have claimed an intereſt, without filing their claim, or giving any notice to the marſhal that they intend ſo to do, ought not to be deemed ſuch a wilful neglect, either againſt the marſhal, for not having reſerved their ſhares, or againſt the captain, for omitting their names in the return of his crew?

In clearing up this point, it may be allowed, that ſo long as property remains in the marſhal's hands, ſubject to the diſpoſal of the court, no length of time ſhould bar a legal claimant from recovering his right.

* Vide page 55.

THE practice is, for the marſhal, after he has made ſale of a prize, to advertiſe in the public papers for all perſons having any claim therein, to appear by a certain day and receive their diſtributive ſhares. If, after that day, he ſhould find any perſon's names in the liſt of the crew handed to him who have not appeared in perſon, or by agent, he makes report thereof to the judge, who, by virtue of a law of this ſtate, will appoint an agent for ſuch abſent perſons. After which diſtribution is made and the accounts cloſed, and lodged in the regiſter's office.

Now, if any ſhould think themſelves injured by the return of the crew, inaſmuch as their names have been omitted, and yet ſhall ſtand by and ſee the whole of the property diſtributed, without applying to the court or marſhal for their ſhares, or giving any legal notice of their intention to make ſuch a claim, it ſeems to be a reaſonable concluſion that they have voluntarily abandoned their right. In the preſent caſe it is remarkable, that theſe very libellants brought their ſuit two years ago for ſhares in the Gloceſter, and recovered, and yet from that time to the preſent they inſtituted no claim for ſhares in the Lady Margaret, although this prize was, with reſpect to them, in the ſame predicament with the Gloceſter.

It is very true there is no ſtatute of limitations in the admiralty, but all things muſt be limited by right reaſon. A ſtrong argument *ab inconvenienti* may ſupply the place and have the force of a ſtatute. For, if there are indeed no limits, how long ſhall the marſhal wait for claimants to come in before he ſhall proceed to diſtribution? Or if, after thoſe who are legally entitled have received their reſpective ſhares, they are to be for ever liable to be called upon to refund, for the ſatisfaction of future latent claims, when ſhall they preſume that what they have got is really their own? But no reaſonable apology can be made for thoſe who have knowingly ſuffered diſtribution to be made without making their claim.

But it hath been ſuggeſted, and is indeed within the view of the court, that ſome part of the monies ariſing from the ſales of the Lady Margaret and her cargo, may yet be in the hands of the late marſhal. If ſo, I have no doubt but that ſuch of the libellants, as fall within the deſcription of the *ſecond* point or queſtion above ſtated, are entitled to their reſpective diſtributive ſhares thereof.

By theſe principles I have examined the ſituations of the libellants reſpectively, which I have

carefully aſcertained by the articles of enliſtment, and the depoſitions exhibited. And I find, that Charles Marmet, Thomas Aſhton, Patrick Kean, James Hamilton, Patrick M'Daniel, John Crawford, James Galloway, Patrick Mahoon, Peter Sherkes, William Cole, Edward Geiner, Enas M'Comer, Edward Crow, George Brand, James Murray, Benjamin Lewis, Philip Jordan, John Blaney, and Felix Hughes, are juſtly entitled. And thereupon I adjudge and decree, that they have and receive a landſman's ſhare each from Matthew Clarkſon, late marſhal, of the monies that may remain in his hands, from the ſales of the Lady Margaret and her cargo, or proportionable dividends thereof, in caſe there ſhould not be ſufficient to ſatisfy the whole.

And further I adjudge, that the bill in this cauſe, ſo far as hath reſpect to the claims of James Barney, George Stanton Richard Fair, Charles Keaſley, Joſeph Ditz, and Daniel M'Farland, be diſmiſſed.

And laſtly, I adjudge that the libellants pay the coſts of this ſuit.

M'CULLOCH

M'CULLOCH *verſus* THE SHIP LETHE.

M'CULLOCH had ſhipped on board, the Lethe, in time of war, for a certain voyage from Philadelphia to Bourdeaux, and back again, at the wages of £.18 per month. The ſhip was detained long at Bourdeaux and whilſt ſhe was there, peace took place. The libellant performed the voyage, but was refuſed the wages on account of the peace, on a ſuggeſtion that the riſk, which was the occaſion of the high wages being removed, the libellant ought to have only cuſtomary peace wages from Bourdeaux to Philadelphia.

JUDGMENT, in favour of the libellant for wages agreeable to contract.*

* See page 123.

BRICE AND WOODROFF *verſus* THE NANCY.

THE libellants entered on board the *Nancy* in January, 1783, and ſigned articles, acccording to cuſtom, for a certain voyage to L'Orient, and back again to the port of Philadelphia. *Brice* engaged to ſerve in the capacity of firſt lieutenant, and *Woodroff*, as ſurgeon, to the ſhip, which was an armed letter of marque. By theſe articles Brice was to receive £.18 and Woodroff £17. per month. At this time it was war between Great Britain and the United States of America. The ſhip fell down the river in order to commence her voyage, but from various cauſes of delay, did not clear the Capes, ſo as to enter on the high ſeas, before the 20th of March following. In the mean time, viz. on the 3d of March, peace had taken place, and hoſtilities ceaſed between the belligerent powers.

WHEREUPON, it has been alledged in behalf of the reſpondents, that £.5 per month are the cuſtomary

cuſtomary wages in time of peace, and a full recompence for ſervices for navigating a ſhip; that all above that ſum is allowed in conſideration of the riſk and dangers of war. That the conſideration failing, and no riſk being incurred, as peace had taken place before the ſhip had entered on the field of danger, the extraordinary wages ought to abate, and that the libellants ought to be content with peace wages for ſervices done in time of peace.

On the contrary, it has been urged, that the contract was duly and regularly made: that contracts are ſacred things, and ought to be taken entire, and ſtrictly conſtrued: that contracting parties ſhould not be admitted to explain their intentions afterwards, or recede from the terms of their bargain, on account of future contingencies, provided there was no fraud in the caſe: that the performance of the voyage, and doing the duty on board, are the true conſideration of the wages: that whether theſe wages are high or low is a matter that ſhould have been conſidered when the contract was made: that as it cannot be ſuppoſed, that if the danger had been greatly encreaſed by the arrival from an enemy's fleet on the coaſt, or from any other circumſtance, the owners would have allowed encreaſed wages, neither

ought

ought they to diminiſh the wages, becauſe the danger happened to be leſſened by the intervention of peace. And laſtly, that the voyage was actually commenced when the ſhip left the port, although ſhe remained long after in the river.

JUDGMENT.

THE advanced wages above what is cuſtomary in time of peace is in conſideration of the riſk and dangers incident to war: in the preſent caſe it is clear that both parties, when they made the contract, had war in view, as is evident from the ſtations the libellants were to fill, viz. the one, that of firſt lieutenant, and the other, that of ſurgeon of the ſhip, offices unknown on board of merchantmen in time of peace. Whether it would indeed be peace or war, was a circumſtance out of the reach of the parties to command. Peace, however, did take place, ſeventeen days before any riſk whatever was incurred on account of the war.

THE caſe of inſurance cited from 3d Burrow's, p. 1237, is a leading caſe in point. The contract there was regularly made between parties, more competent to be ſtrictly bound than common mariners, viz. the owners of a ſhip and the under-

der writers, and yet it was determimed by all the judges, that this contract ought to be liberally conſtrued; and that the inſurance premium ſhould be returned for ſuch part of the voyage as had ran no riſk.

THE cauſe lately decided in this court, M'Culloch verſus Lethe, has been quoted; but there is a manifeſt and eſſential difference between that caſe and the preſent. In the former, the libellant had actually incurred the riſk, had ſubjected himſelf to be killed in battle, or taken priſoner, which was the real conſideration of the war wages promiſed; in the preſent caſe no riſk from war was at all iucurred: for, although much pains hath been taken to ſhew, that the captain and crew of the Nancy, not having heard of the peace, had ſufficient reaſon to think that it was war when they ſailed, and conducted themſelves accordingly; yet the queſtion is not, what might have been their apprehenſions, but what was the reality of the danger, or whether it was indeed war or peace at the time?

HAD this veſſel advanced into the ſcene of danger, though but for twenty-four hours before peace had taken effect, I ſhould have no doubt in allowing the libellants their full wages, accor-

ing

ding to the articles, upon the ſame principles on which wages were decreed to M'Culloch.

That the common law doctrines reſpecting contracts do not apply in all their ſtrictneſs to caſes maritime is evident from the conſtant practice of this court. The enliſtment of mariners have neither the complexion nor the formalities required by the rules of common law; and it would be hard to bind men ſo ignorant as common mariners generally are, to the legal conſtruction of terms, nor would it be for the intereſt of mariners, that articles ſhould be ſo ſtrictly conſtrued, as the operation would probably be frequently much againſt them.

It appears, that when the libellants entered on board the Nancy, it was actual war, and that they held themſelves in readineſs to do the ſervices, and encounter the dangers for which the ſtipulated wages had been promiſed. It was not their fault that the veſſel did not forthwith proceed on her voyage. I ſee therefore no reaſon againſt their being allowed full wages for that period, and the common uſage is to allow mariners their wages from the time of ſigning the articles, let the veſſel ſail when ſhe may.

I adjudge that the libellants have and receive their

their full wages, according to contract, from the time of ſigning the articles, to the 3d of March laſt; and that they receive cuſtomary peace-wages from the ſaid 3d of March, to the completion of the voyage.

SHAW *verſus* THE LETHE.

THOMAS Shaw, the libellant, entered on board the ſhip *Lethe*, as ſurgeon, and contracted to ſerve in that capacity from Philadelphia to Bourdeaux, and back again, for the wages of £.15 per month. It was then war, and ſo continued till the veſſel arrived at Bourdeaux: whilſt ſhe was there in port peace took place. The libellant continued on board, and returned with the veſſel to Philadelphia, and now demands the ſtipulated wages of £.15 per month, notwithſtanding the peace.

MUCH has been ſaid reſpecting the entirety of contracts on the one hand, and the diviſibility of

of contracts, particularly thoſe of inſurance and mercantile agreements, on the other.

It has been urged for the libellant, that the voyage to Bourdeaux and back again, muſt be conſidered as one entire voyage; and that if this veſſel had been inſured, or chartered, there could have been no apportionment of the premium or hire on account of the peace.

Against this doctrine, the caſe of *Stephenſon* verſus *Snow*, 3d Bur. 1237, has been cited, and fully conſidered. The caſe was—a ſhip was inſured for a certain premium, to ſail from London to Halifax; the inſured warranting that ſhe ſhould ſail with convoy from Portſmouth. She arrived at Portſmouth, but the convoy was gone. Whereupon a return of premium was demanded, deducting only the cuſtomary inſurance from London to Portſmouth. The entirety of contracts was here urged againſt the inſurers, but over-ruled by the whole court, who conſidered the contract as diviſible, and having reference to two diſtinct voyages, viz. from London to Portſmouth, and from thence to Halifax; and determined that as the riſk of the ſecond voyage had never been begun, the premium for that had never inured.

This

THIS caſe appeared at firſt view to apply cloſely to the preſent; but, on a nearer inſpection, I find that the warrantee to ſail with convoy was the ground of that deciſion. It was that alone which rendered the voyage diviſible, becauſe it was of the eſſence of the contract. Had the ſhip ſailed without, and been loſt, the inſurers would not have been anſwerable. Had ſhe been inſured from London to Halifax, without any condition annexed, and had ſtopped in her way at Portſmouth, and proceeded no further, the voyage would not, I apprehend, have been deemed diviſible on that account, nor the premium apportioned; ſo that the warrantee to ſail with convey was the foundation of the contract, which failing, the contract failed, ſo far as the ſame had reſpect thereto. The voyage from London to Portſmouth ſeems to be no more than a neceſſary paſſage to the place where the ſubſtantial part of the contract was to take effect; where the premium was to be earned by the commencement of the riſk under the condition ſpecified.

BUT I find nothing parallel with this in the articles of the ſhip Lethe: no contingency mentioned; but only a ſimple contract for a voyage to Bourdeaux and back again, in conſideration of certain

ſervices

ſervices to be performed on the one part, and certain wages to be paid on the other. If there is any ſimilarity in the two caſes, it conſiſts in this; that, as in the one, the ſailing with convoy was the ground of the *quantum* of the premium; ſo in the other, the war was the ground of the *quantum* of wages. In the caſe referred to, the contingency was fully recognized in the contract: the ſhip was warranted to ſail with convoy, but no contingencies are provided for in the Lethe's articles. If the inſured veſſel had ſailed with the convoy, though but for one day, and returned, it cannot be ſuppoſed that any part of the premium would have been reſtored.

THAT the mere arrival of a veſſel at a port or ports cannot be conſtrued as a diviſion of the voyage delineated by the articles, is manifeſt from a current of law and practice: ſo it was determined in the caſe of Bernon *verſus* Woodbridge, Douglas, 753, and numberleſs charter parties, inſurances, and articles for mariner's wages have reference to circuitous voyages. Nor was it underſtood, that a fortuitous increaſe or diminution of the riſk, or any alteration of circumſtances between one port of deſtination and another, would affect the contract, unleſs provided for by the terms of the agreement.

BUT

BUT it hath been ſtrongly urged, that the high wages promiſed, and the nature of the ſervice to be performed, have reference to war only; and that as peace took place whilſt the veſſel was ſafe in port, the voyage, from the manifeſt object of the contract, became diviſible: and that it would be very hard to bind the maſter or owners to the moſt ſevere conſtruction of the articles, and make them pay for ſervices, which, from an unforeſeen change of affairs, were rendered impracticable.

ALTHOUGH there is an equitable force in this argument, yet, under the circumſtances of the caſe, there ſeems to have been an obvious duty on the part of the maſter to have entitled him to an equitable relief from the binding force of the articles. He ſhould have propoſed to pay off the crew at Bourdeaux, and tendered a new contract on peace eſtabliſhment, proteſting againſt the former articles. Nor is this a mere ceremony, but what ſubſtantial juſtice ſeems to require. The mariners, under the articles, could not leave the ſhip without incurring a penalty. If then they are detained on board without any explanation, notwithſtanding the great change of circumſtances, they had ſufficient reaſon to conclude, that they were continued in the ſervice upon the terms of

the ſubſiſting contract: and this reaſoning will well apply if the caſe be reverſed. Suppoſe the mariner had engaged in time of peace, and war had broke out during the voyage, and he had made no declaration that he was diſſatisfied with the terms of his contract, or expected war wages in conſideration of the riſk he was to run, I believe there are few maſters of veſſels who would not urge his ſilence as an acquieſcence in the continuation of the contract, and bind him down to the terms of the original contract.

It is ſo natural to expect ſome declaration of the will of contracting parties, when circumſtances out of the reach of either have occurred, which totally alters the principles upon which the contract was formed, that an omiſſion of ſuch declaration can have no other interpretation, but that of wilful neglect or deep deſign, neither of which is the law diſpoſed to countenance. Hence, probably, aroſe the cuſtom of proteſts, in caſes of wreck, illegal capture, fire, and other unforeſeen and unavoidable accidents.

One other argument hath been urged for the reſpondents, viz. that freight is the mother of wages; inferring, that as this veſſel received only peace

peace freight from Bourdeaux to Philadelphia, no more than peace wages ought to be allowed for that part of the voyage.

It does not appear in teſtimony what freight this veſſel received: but if it did, I ſee no force in the argument. There is, in fact, no connexion between freight and the quantum of wages; nor are the mariners ever privy to the terms on which a cargo hath been ſhipped. It is only a law of policy which arbitrarily makes the payment (not the rate per month) of the wages to depend on the ſafe conduct of the cargo, in order to induce the mariners to exert themſelves in caſe of wreck, to ſave as much as poſſible, knowing, that if the whole be loſt, they muſt loſe the whole of their wages. If the freight is thus called the mother, the ſervice performed may well be deemed the father, of the mariner's wages, that being the real and legal conſideration. There is no doubt but the mariner ſhall have his wages, in caſes where no freight at all is received; as in veſſels ſailing with ballaſt only, which often happens. The truth is, the mariner's lien is on the ſhip, and not on the cargo. Nor, was it ever known, that freight could be attached in the merchant's hands to anſwer for mariner's

wages, but the ſhip is liable under all circumſtances.

I have not noticed the ſhip's going to Teneriffe from Bourdeaux before ſhe came to Philadelphia, as this circumſtance, if it has any operation at all, muſt be againſt the maſter, who ought not to benefit by his own deviation from the articles.

After mature conſideration, I cannot find ſufficient reaſon to give a different deciſion now, from what was lately given in the caſe of M'Culloch, againſt the ſame ſhip. The continuation of the libellant on board, after it was known that peace had taken place, without any declaration of the maſter, that he expected the terms of the contract ſhould be changed, is too ſtrong a circumſtance to be got over.

But, as I think it a hard caſe, I would recommend an appeal; that the law and arguments may be again conſidered by another court.

JUDGMENT.

That the libellant receive wages agreeably to the contract; and that he pay one half, and the reſpondent the other half of the coſts of ſuit.

N. B. An

N. B. An appeal—and the court of appeals confirmed the above ſentence; and gave the appellee coſts of ſuit, and intereſt on his wages, from the date of the decree in the admiralty.

(1784.)

DRAY, & al.

verſus

THE COLLIER.

THIS veſſel was attached under an act of aſſembly, allowing perſons concerned in building, repairing, fitting out, and furniſhing veſſels for a voyage, to ſue in the admiralty, as mariners ſue for wages—paſſed the 27th of March, 1784.

THE bill was diſmiſſed, and the libellant adjudged to pay coſts, on account of the badneſs and inſufficiency of the work done.

SILAS TALBOT

verſus

THE OWNERS OF THE BRIGS ACHILLES, PATTY, AND HIBERNIA.

IN September, 1779, Silas Talbot, being on a cruiſe in the ſloop Argo, diſcovered, and purſued the brig Betſey, a Britiſh letter of marque, about 200 tons burthen, armed with 8 ſix pounders, and laden with 214 puncheons of rum, and one quarter caſk, and bound from Montſerrat or St. Chriſtopher's, to New York, then in the poſſeſſion of the enemy. After an engagement of two hours, Talbot captured the Betſey; put one Weſt on board, as prize maſter, together with eleven of his crew, with written orders to the prize maſter to take her into the port of New London, then not far diſtant, for condemnation.

THE next day after the capture, the three brigs, Achilles, Patty, and Hibernia, belonging to the reſpondents in this cauſe, came up with the Betſey, under

under Britiſh colours. Captain Talbot taking them for enemies, was obliged to leave his prize, and fly: whereupon one of the three brigs chaſed the Argo, whilſt the Patty fired upon, boarded, and captured the Betſey.

West, the prize maſter, finding them to be Americans, declared that the Betſey was a prize of captain Talbot, in the Argo, then in ſight, and ſhewed Talbot's written orders to him: but for fear of their claiming ſhares of the prize, as having been in ſight when ſhe was captured, aſſerted, that ſhe had been taken three days before. The perſons who boarded the Betſey having ſeen a battle the day before, between a brig and a ſloop, which they believed to be the ſame; and obſerving that the number of men on board, correſponded with the number regiſtered in her Britiſh papers, concluded that no credit ſhould be given to Weſt's declaration. Whereupon, a conſultation was held by the three captains,* who finally made prize of the Betſey, took out all the Argo's men, except one negro, and putting their own people on board, ordered her for Philadelphia. But ſhe was ſoon after captured by a Britiſh cruiſer,

* According to W—— D——'s depoſition.

and carried into New York—and ſo loſt to all parties. The three brigs purſued their reſpective voyages; taking the Argo's men with them, whom they left in Spain, and other remote parts.

THE reſpondents have reſted their defence on two grounds of argument: *Firſt*, they alledge, that they have produced ſufficient teſtimony to prove that the brigs Achilles, Patty, and Hibernia, were within ſight, when the Argo engaged and captured the Betſey, and acquired thereby a property in the prize, according to the maritime law: inferring, that as their intereſt in the booty was much greater than that of the Argo, they being three to one, they had a right to order the prize where they judged beſt for their ſecurity and benefit; more eſpecially as they had reaſon to doubt the fidelity of Weſt, in whoſe poſſeſſion they found her, on account of the falſhood he had told them: concluding, that if any injury was done to the libellant, it only amounted to his proportionable ſhare of the booty, for which alone they ought to be anſwerable. *Secondly*, that many ſuſpicious circumſtances on board the Betſey—ſuch as the Britiſh papers, the number of men on board agreeing therewith, and the declaration of Weſt, that ſhe had been captured three days before,

fore, contrary to their own obſervation, were ſufficient to induce them to conclude that the whole was an artifice; and, therefore, they were juſtifiable in taking her as original prize, and to conſider themſelves as the firſt captors.

THESE two poſitions of defence are ſupported by the teſtimony of W—— D——, a paſſenger on board the Patty. This depoſition, on which alone the reſpondents have relied, labours for the eſtabliſhment of two facts which are altogether incompatible with each other, viz. firſt, that the three brigs ſaw the Argo engage and capture the Betſy; and, ſecondly, that the Betſy had not been captured at all, or, at leaſt, that the captains of the three brigs had good reaſon to think ſo, and were juſtifiable in taking her as original prize. One only of theſe poſitions can be true: therefore, a teſtimony which labours to eſtabliſh both, may, at leaſt, be ſaid to prove too much.

THE fact beſt ſupported by the circumſtances ſeems to be, that the three brigs were in ſight of the battle between the Argo and Betſy. What then was their conduct in this point of view? The next day after the engagement, of which they

they had been diſtant ſpectators, they come up under Britiſh colours; they find the Betſy in the poſſeſſion, and under the protection of the Argo, her captor; they chaſe away the Argo, and fire on the prize under Britiſh colours; they board her; take out all the people placed on board by captain Talbot; man her with part of their own crews; give her in charge to their own prize-maſter, and order her for Philadelphia. Could their having been in ſight, the day before, of the engagement between the Argo and the Betſy, juſtify ſuch a procedure? Surely it could not. Beſides, it is manifeſt, that the rule of law reſpecting veſſels in ſight of a capture does not refer to what may have been ſeen by the claimants, but by people on board the prize: for the rule is founded on a preſumption, that the crew of the captured veſſel, ſeeing others coming up armed and prepared for battle, were thereby induced to ſurrender.

FURTHER, I can on no account admit the doctrine, now for the firſt time advanced, and unſupported by any authority whatever, that captains, claiming a ſhare in the prize they may have ſeen captured, have a right to order the booty where they pleaſe, by virtue of a majority of votes, or of

of their ſuperior intereſt in the captured property. Their claim muſt follow, and depend upon the ſucceſs of the real captor. Beſides, in the preſent caſe, the libellant who fought for, and alone took the brig Betſey, had at leaſt ſome right in the prize: the captains of the three brigs therefore, ought in juſtice, to have left his prize-maſter on board to proſecute the Argo's claim, which was not done.

UPON the whole, this ſeems to have been an act of ſuch unjuſtifiable violence and wrong, on the part of the brigs Achilles, Patty, and Hibernia, that I am clear in deciding in favour of the libellant in this cauſe. And, having carefully aſcertained the value of the property loſt, I find that a brig of 200 tuns, mounting eight ſix-pounders, with her tackel, apparel, furniture, and proviſions on board, was, in October 1779, worth

	£ 3,500	0	0
214 puncheons of rum, averaging 100 gallons each, at 10/0 per gallon,	10,700	0	0
1 quarter-caſk, 25 gallons,	12	10	0
	£.14,212	10	0

Total

Total,	£ 14,212	10	0
But as the brig Betſey had not yet arrived in port, and allowance ſhould be made for the riſk ſhe had to run, which appears to be worth 10 per cent. inſurance, amounting to	1421	5	0
Which being deducted, leaves	£.12,791	5	0

JUDGMENT in favour of the libellant for £.12,791 5 0, with coſts of ſuit.*

* No diſcrimination was, in this cauſe, attempted to be made between the three captains of the brigs Achilles, Patty, and Hibernia: the principal facts were attributed to all, and the judgment was general againſt the reſpondents.

THE cauſe was carried by appeal, to the court of appeals in prize cauſes eſtabliſhed by congreſs; but the judges rejected the cauſe, conceiving it to be a ſuit between citizen and citizen for damages merely, and therefore not within their juriſdiction. The court was ſoon afterwards diſſolved on account of the peace. The appellants then removed their cauſe to the high court of errors and appeals for the commonwealth of Pennſylvania, where, after long arguments, as well reſpecting the juriſdiction, as on the merits, a decree paſſed in favour of Silas Talbot for £.11,141 5 4, with coſts.

DEAN

DEAN, AND OTHERS,

verſus

JOHN ANGUS CAPTAIN OF THE HIBERNIA.

Judgment on a Plea to the Juriſdiction of the Admiralty.

IN a former ſuit in this court, *Silas Tabot* libelled and recovered againſt Deans, Purviance, and Harbeſon, as owners of the brigantine Hibernia, and alſo againſt certain other perſons, reſpondents in that cauſe, for a wrongful capture on the high ſeas. From the decree in that cauſe, an appeal was made to the high court of errors and appeals for this commonwealth, where a judgement was finally obtained againſt the ſaid reſpondents, to a conſiderable amount. And now, Dean Purviance, and Harbeſon, owners of the Hibernia libel againſt John Angus, their captain, for ſatisfaction of the damages they have ſuſtained, in conſequence of the wrongful capture he had made.

To

To this libel, *Angus* hath filed for anſwer, a denial of the wrong done, and a plea to the juriſdiction of this court in the preſent cauſe: "For "this, viz. that the contract between the ſaid li- "bellants, and him the ſaid Angus, and alſo the "damage alledged to be ſuſtained by the ſaid li- "bellants, if any there be, aroſe upon the land, "to wit, in Philadelphia, in the county of Phi- "delphia."

THREE acknowledged principles of law naturally preſent for the ſolution of the preſent queſtion.

1ſt. WHERE the original cauſe of action is *excluſively* of admiralty, or *excluſively* of common law juriſdiction, all incidental matters neceſſarily flowing from or dependant upon the firſt cauſe of action, ſhall follow the original juriſdiction, whatever the complexion of thoſe matters, ſeparately conſidered, may be.

2dly. WHERE the original cauſe of action is partly of common law, and partly of admiralty juriſdiction, the common law ſhall be preferred.

3dly. WHERE the juriſdictions are concurrent, the ſuit may be determined in either.

To

To one or other of theſe principles muſt the preſent caſe apply: to aſcertain the juriſdiction by which it is to be tried, and the propriety of the application depends upon this ſole queſtion, What is the original cauſe of action in this ſuit?

It is alledged in ſupport of the plea, that this is a *new* action between the owners of a veſſel and their captain, and hath no neceſſary connexion with the ſuit brought by Silas Talbot: that it is enough, if the reſpondent ſhews that the decree paſt againſt the libellants, not as principals in the wrongful capture, but ſolely on account of the maritime law, which makes owners anſwerable for the miſconduct of the captains they employ; and therefore their connexion with Angus, as captain of the Hibernia, muſt be conſidered as the true cauſe of the damage they ſay they have ſuſtained, and the ſource from which the preſent ſuit originates. And ſo infer, that as this connexion is grounded on a contract expreſs or implied, made upon land, the original cauſe of action muſt, from its nature and locality, be *excluſively* of common law juriſdiction.

The two criterions of excluſive juriſdiction are, the *ſubject matter*, and the *locality* of the tranſaction.

It is not doubted, but that the queſtion, *prize or no prize?* when it is the foundation of a ſuit, is *excluſively* of admiralty cognizance from the *ſubject matter.* The authorities to this point are too preciſe to admit of doubt. But ſome of theſe authorities go further; and ſay, that the mere taking *as prize*, and all matters dependant thereupon, are alſo peculiarly of admiralty juriſdiction. Ld. Ch. Jus. Lee's opinion, in the caſe of Rous verſus Haſſard, as cited by Lord Mansfield, and again cited by juſtice Willis, in the caſe of Le. Caux verſus Eden. Douglaſs, 581, is full to this purpoſe. "The great queſtion was, Whether an action for "treſpaſs would lie for taking a ſhip as a prize? "Lord chief juſtice *Lee*, having called in two "civilians to his aſſiſtance, delivered the opinion "of the court. That though, for taking a ſhip "on the ſeas, treſpaſs would lie at common law; "yet when it was taken *as prize*, though ta"ken wrongfully, though it were acquitted, and "though *there was no colour for* the taking, the "judge of the admiralty was judge of the dama"ges and coſts, as well as of the principal mat"ter: and he laid it down as law, that, if ſuch an "action was brought in England, and the defen"dant *not guilty*, the plaintiff could not recover."

It is clear by this authority, that in order to fix the admiralty juriſdiction, it is not neceſſary that the queſtion before the court ſhould preciſely be, *prize or no prize?* but that a ſuit for coſts and damages may and muſt be brought in the admiralty for a taking *as prize*, though wrongfully done, and even without any colour for ſuch taking, and, as it ſhould ſeem from the caſe, even though the property ſo taken ſhould not be in the poſſeſſion of the court.

So alſo, in the caſe of Lindo verſus *Rodney* and *Vaughan* (Douglaſs, 592.) Lord Mansfield, in giving the opinion of the court, ſays: "A thing "being done upon the high ſeas, does not exclude "the juriſdiction of the common law; for ſeizing, "ſtopping, or taking a ſhip upon the high ſeas, "*not as prize*, an action will lie, but for taking "*as prize*, no action will lie. The nature of the "queſtion excludes not the locality." And a little further on—"The end of prize-court is "to ſuſpend the property till condemnation, *and* "*to puniſh every ſort of miſbehaviour in the cap-* "*tors.*"

How it came to paſs that the caſe of Silas Talbot was, by the court of errors and appeals, and ſtill is, by conceſſion of council in the preſent

cauſe,

cauſe, conſidered to be *not* of admiralty juriſdiction on account of the *ſubject matter*, I am at a loſs to conceive; eſpecially when I look at the two only points of defence taken in that cauſe, viz. firſt, that from the papers found on board the captured veſſel, and from other concomitant circumſtances, there was a reaſonable colour for *taking as original prize*. And, ſecondly, that if the Betſy was indeed prize to Silas Talbot, the three brigs were in ſight at the time of the capture, and by the maritime law, acquired thereby an intereſt in the property. I ſay, theſe pleas, together with the current of the teſtimony then exhibited, and the time of the tranſaction, being time of war, all united in fixing that cauſe within the admiralty juriſdiction, from the ſubject matter, and the very nature of the caſe.

It is in obedience to ſtrong conviction that I thus venture to differ in opinion from the judgment of the honourable court of errors and appeals: a judgment which I am inclined to believe would not have taken place, but for the peculiar ſituation of Talbot's cauſe. The court of appeals for the United States, in prize-cauſes, had rejected the appeal, becauſe the

queſtion was not ſtrictly, *prize or no prize?* but an action for damages between citizen and citizen. That court, as I have underſtood, looked at that cauſe in no other point of view, and therefore refuſed to take cognizance of it, and ſoon after was diſſolved. The appeal was then carried to the high court of errors and appeals for this commonwealth. Here the proctors had made a previous agreement, not to conteſt the point of juriſdiction; and ſo the cauſe came before the judges on the merits only, and the court proceeded to ſentence without ſuſpecting their juriſdiction. After ſentence, however, ſome of the judges began to entertain ſcruples reſpecting the juriſdiction of the court; and, on enquiry, found that the juriſdiction had only been ſubmitted to by conſent. The court well knew that conſent could not give legal juriſdiction; and thereupon retracted or ſuſpended the ſentence until an argument ſhould be held on that point: and the queſtion of juriſdiction was again agitated. In the mean time, that is between the rejection of the cauſe by the court of appeals for the United States, and its introduction into the court of the commonwealth, the caſe of Le Caux verſus Eden, as reported by Douglaſs, with Lord Mansfield's diſſertion on admiralty juriſdiction ſubjoined, made

their firſt appearance amongſt us, and furniſhed new ideas reſpecting the court of admiralty. Then, for the firſt time, did the diſtinction occur, between the *prize*-court and the *inſtance*-court of admiralty. Poſſeſſed of this idea, the judges of appeal for the ſtate, looked at the proceedings which the court of admiralty had adopted in the caſe before them, and found they had been *in perſonam*, by attachment, to anſwer for damages ariſing from a tort committed at ſea. This, it was obſerved, was never the practice in the *prize*-court, which always proceeded *in rem*, by proclamation and monition, whether the property be in fact in the poſſeſſion of the court or not: and ſo it was in the caſe of the king verſus Broom, *Carth.* 398. by proclamation at the Royal Exchange, although the prize taken had been previouſly ſold at Barbadoes. And for this error of form in the admiralty, *Talbot's* caſe was conſidered as belonging to the *inſtance*-court. The judges of apppeal conſidered themſelves as an *inſtance*-court of appeal, and ſo proceeded to the definitive decree.

HAD the court of admiralty, when Talbot's cauſe firſt made its appearance there, been poſſeſſed of the light which hath been ſince thrown upon

on this ſubject, it is very probable that the proceſs would have been conducted otherwiſe than it was. It ſhould be obſerved, however, that an *excluſive* juriſdiction cannot be ſubverted by an erroneous proceſs.

How far the conſideration, that if the court of appeals for the commonwealth ſhould reject Talbot's cauſe (as the court for the United States had done) the appellants would have had no other reſource, and ſo have been deprived of the benefit of an appeal altogether, might have operated to induce the judges to take that within their cognizance as an *inſtance*-court, I will not preſume to ſay; but the peculiar circumſtances of the caſe ought to be remembered: and I have mentioned them on this occaſion from a ſenſe of the duty I owe to the juriſdiction entruſted to my care.

I come now to conſider the origin of the cauſe now before me, and whether it is, or is not, neceſſarily dependant upon, and conſequential to, the caſe of Silas Talbot.

It has been ſaid, that this ſuit is derived from three circumſtances, viz. the contract by which Angus was made captain of the Hibernia, the wrongful taking at ſea, and the damages the li-

bellants have been obliged to pay in conſequence of this contract and wrongful taking. And it has been urged, that as two of theſe circumſtances viz. the contract and the payment of damages, happened on the land, the common law, by the ſecond general rule, hath the excluſive juriſdiction.

It appears to me, however, that owners are anſwerable for torts done by the captains they employ, under a general principle of law, and not by virtue of any ſpecial contract whatever. No ſuch reſponſibility can be deduced from any articles, or ſailing orders given to captains of veſſels. The contract may be the ground of an action of damages for a breach of orders, reſpecting the particular intereſts of the owners; but in caſes of tort the owners are anſwerable by a general law. The libellants have been obliged to pay the damages in Talbot's caſe, not becauſe they employed captain Angus, but becauſe they were owners of the brigs.

Neither can I conſider the payment of monies, according to the decree in favour of Silas Talbot, as the origin of the preſent ſuit. We ſhould not ſtop ſhort in the train of cauſes. In ſuch a train, every circumſtance is the effect of the preceding and the cauſe of the ſubſequent link. No decree would

would have paſt, no damages have been paid, nor would the preſent ſuit have been inſtituted, but for the original wrong done at ſea. To this wrong, therefore, we muſt have recourſe for the ſource of the preſent action.

SOME pains have been taken to apply the caſe of ranſom bills, charter parties, and policies of inſurance, all ſueable at common law, to the preſent ſuit. A ranſom bill ſuppoſes a diveſture of property by the rights of war, and the bill is a promiſſory note for a certain ſum, in conſideration of the victor's relinquiſhing his right of conqueſt, and reſtoring the property. In a ſuit, therefore, on a ranſom bill, the queſtion of *prize or no prize* can only come in incidentally, to ſhew whether there was value received or not. For if the taking was wrongful, the property never diveſted, and of courſe the promiſſory bill was given without conſideration. Charter parties, and policies of inſurance, are written contracts, executed on land, reſpecting certain ſpecific contingencies: it is immaterial where theſe contingencies ſhall happen. The ſuit is founded on the binding force of the contract, and the contingencies are only incidental circumſtances, ſhewing that the force of the contract is to take place and operate. But theſe are not parallel with the caſe

before the court, wherein the libellants complain of damages they have ſuſtained in conſequence of a tort committed at ſea by the captain they had employed.

WHEN the caſe of Silas Talbot came firſt before this court, the libel was filed in the name of Silas Talbot, *qui tam*, againſt the brigs Achilles, Patty, and Hibernia, and againſt certain perſons in the ſaid libel named, as owners and captains of the ſaid brigs. All theſe perſons (except two, if I rightly remember) appeared either in perſon or by proxy, and entered into ſtipulations, according to the practice of the court. In this form the ſuit commenced, and proceeded through the admiralty, and through the court of appeals. The queſtion was general in both courts, viz. Whether there had been a wrong done? and if ſo, whether the parties who appeared as reſpondents to the libel, were anſwerable for the damage, and to what amount? And, finally, the decree was alſo general—That the appellants ſhould pay to the appellee certain monies in recompence of the injury ſuſtained. But how far any particular captain, or the owners of any particular veſſel might have juſtified themſelves by a ſeparate defence, was never the ſubject of enquiry. No ſuch ſpecific juſtification having been proffered in either court. And whether it is, or is not

not now too late, to make diſcrimination, may be the ſubject of future diſcuſſion: but I mention this to ſhew, that the preſent libel riſes out of Talbot's caſe, and that its purſuit will unavoidably force us up to the wrongful taking *as prize* for the origin of the preſent ſuit. Since then, I cannot but conſider the caſe of Silas Talbot, as properly belonging to the *prize*-court of admiralty, and that the preſent ſuit originates from, and is a ſupplementary part of that tranſaction, I cannot (according to the firſt principle ſtated) but over-rule the preſent plea to the juriſdiction of this court.

I conclude with this obſervation—That in all pleas of this kind, where the law is doubtful, the leaning of the court will be in favour of its own juriſdiction—not from a deſire of extending the admiralty cognizance, but for this conſideration—That if the deciſion in favour of the juriſdiction ſhould be erroneous, the doors of the common law are open for redreſs, and a prohibition may be obtained. But there is no remedy for the erroneous excluſion of parties who apply for the proceſs of the admiralty, the benefit of the laws by which it is governed, and the ſummary juſtice it affords.

May, 1785.

DEAN

DEAN, AND OTHERS,

verſus

JOHN ANGUS.

JUDGMENT ON THE MERITS.

THE bill filed in this caſe ſtates, "That John Angus, being commander of the brig Hibernia, belonging to Joſeph Dean and others, did, on a certain day, without any licence, order, or authority, from his owners, and without any probable cauſe of capture, with a view to his own private intereſt and emolument, combine and confederate with certain malefactors, and did purſue and take the brigantine Betſey, then in the poſſeſſion of Silas Talbot, commander of the ſloop Argo, as lawful prize and booty of war. And that the ſaid John Angus, not being ignorant of the premiſes aforeſaid, but well knowing the ſame, and intending to deprive the ſaid Silas Talbot of his prize, and to defraud and injure, as much as in him

him lay, his owners, the libellants in this cauſe, did cauſe the brigantine Betſey to be ſent to places unknown, &c. whereby ſhe was loſt, &c."— "That for this cauſe, the ſaid Silas Talbot did afterwards file his bill in this court againſt the ſaid John Angus, and againſt his owners, the preſent libellants, and alſo againſt certain other perſons, in the ſaid bill named, for the wrong and injury done; and did, by the ſentence and decree of this court, recover againſt them the ſum of £. 12,700:5:0 damages, with coſts of ſuit. Whereupon, an appeal was entered to the honourable the high court of errors and appeals for this commonwealth; in the proſecution and final iſſue whereof, the ſaid Silas Talbot did recover againſt the appellants the ſum of £. 11,141:5:4; of which ſum the libellants in this cauſe were compelled, and did actually pay, the ſum of £. 4000: and alſo that they had expended the further ſum of £. 450, in defending themſelves againſt the bill of the ſaid Silas Talbot, and in the proſecution of their ſaid appeal. Whereupon, they now pray judgment againſt the ſaid John Angus, for reparation of the damage and loſs they have ſo ſuſtained."

I have found it neceſſary to the determination of the

the preſent queſtion, to conſider it under the three following points of view, viz.

Firſt, How far the cauſe now before the court may be conſidered as connected with, or determined by the decree in the caſe of Silas Talbot.

Second, UNDER what circumſtances owners of veſſels ought to recover againſt the captains they employ for damages ſuffered in conſequence of their miſconduct.

Third, THE ſpecific circumſtances of the preſent caſe, as they ſtand on the teſtimony, or what is called the merits of the cauſe.

As to the firſt point—I can ſee no connection between this cauſe, and the caſe of Silas Talbot, further than this; that as it originates in the ſame tranſaction, viz. *a taking as prize on the high ſeas*, the juriſdiction is thereby determined. In all other reſpects the two cauſes proceed on different principles—The points in view in Talbot's caſe were —how far owners of veſſels were anſwerable for torts committed by the captains they employ? and whether the *taking* in queſtion was in fact ſuch a tort as they ought to be anſwerable for? The objects in the preſent caſe are—Under what circumſtances

ſtances owners may recover againſt their captains, and whether captain Angus was, or was not, *particeps criminis* with the wrong doers in Talbot's caſe.

The complexion of the two cauſes being thus manifeſtly different, it cannot, with any reaſon, be admitted, that the teſtimony or decree, founded thereupon in the former, ſhould be concluſive in the preſent caſe. The decree, in Talbot's caſe, was againſt certain perſons, who by ſtipulations, had made themſelves reſponſible for the iſſue of that ſuit on general principles. It is not inconſiſtent with the record of that decree, for captain Angus, who was not one of thoſe ſtipulants, and who was no party in that ſuit, to come in now and make his defence, when perſonally called upon to anſwer, and to ſhew that he was not one of the wrong doers, *againſt whom* that decree was obtained.

On the ſecond point, viz.—Under what circumſtances owners of veſſels ought to recover againſt the captains they employ, for damages ſuffered in conſequence of their miſconduct? It is conſonant with reaſon and authority, that captains are not anſwerable for loſſes ariſing from unavoidable accidents,

cidents, mere errors of judgment, or failure of ſucceſs, after having exerciſed all reaſonable diligence and diſcretion. It would be very difficult, and at preſent unneceſſary to delineate the particular circumſtances and kinds of miſconduct, which ſhould render a captain reſponſible to his owners. Every caſe that occurs muſt be judged of, by its own peculiar circumſtances. The preſent libel ſtates, "That John Angus did, without any authority from his owners, combine with certain malefactors, and without probable cauſe of capture, take the brig Betſey, then in the poſſeſſion of Silas Talbot, as prize and booty of war: and that he did this, not ignorantly, but well knowing the circumſtances, and with a view to injure the ſaid Silas Talbot, and alſo his owners, as much as in him lay." If theſe charges are ſupported by teſtimony now before the court, there can be no doubt, but that he ought to be anſwerable to his owners for whatever they have ſuffered by his miſconduct.

And this leads to the third point, viz.—The conſideration of the ſpecific circumſtances of the caſe, as exhibited by the teſtimony, or the merits of the cauſe.

The

THE facts, ſo far as they reſpect captain Angus, appear to be in ſubſtance theſe:

ANGUS ſailed on a trading voyage from Philadelphia to Teneriffe, in the armed letter of marque brig, *Hibernia*, in company with the brigs *Patty* and *Achilles*, alſo letters of marque, and bound to ſome ports in Europe, under the commands of captains *Prole* and *Thompſon*. Angus had received written inſtructions from his owners (the preſent libellants) to keep company with the two brigs as long as he ſhould think it prudent, and had their approbation to cruiſe with them on the coaſt for two or three weeks, if they ſhould ſo agree. Being at Reedy Iſland, in the Delaware, a conſultation was held between the three captains, and Prole was appointed commodore of this little ſquadron. Soon after they had got out to ſea, they diſcovered a brig and a ſloop at a diſtance. Prole, as commodore, gave orders to chaſe, which was done. Prole and Thompſon, under Britiſh colours, came up with, and took the brig, but the Hibernia, being a dull ſailor, was left four or five miles aſtern. When ſhe came up, captain Angus enquired what the captured veſſel was, and was informed by Prole, or Thompſon, that ſhe was a good prize, bound from Montſerat to New York. To which Angus replied, that if the brig was prize, the ſloop (then in ſight) muſt be

ſo

ſo too: and aſked why one of their faſt ſailing brigs did not purſue her? To which it was anſwered, that they did not chooſe to leave the prize till ſhe was well manned; but ordered him to chaſe the ſloop, which he accordingly did, for two or three leagues; but finding he could not come up with her, he hawled his wind, and beat up again for the other brigs, but did not reach them till dark. Prole then ſent a boat to Angus, demanding two of his hands to man the prize, forwarding, at the ſame time, a paper for Angus to ſign, which appears to have been orders drawn up by Prole, and ſigned by him and Thompſon, for the prize-maſter, to whoſe charge they had committed the captured brig. Angus haſtily ſigned this paper on the binnacle, and ſent the two men required. The wind then blowing freſh, the ſea running high, and night coming on, the four brigs ſeparated and ſaw each other no more.

From this detail, it is manifeſt, that Angus had no opportunity of acquiring information of thoſe circumſtances which were the ground of condemnation againſt the reſpondents in the ſuit of Silas Talbot. The aſſurance of Prole, the commodore, that the Betſey was good prize, was, in the then ſituation of affairs, ſufficient to convince Angus that there was at leaſt probable cauſe of capture. And if the enterprize had been a ſucceſsful

ceſsful one, which he had no reaſon to doubt, Angus would not have been juſtifiable in neglecting any thing on his part to ſecure to his owners a ſhare of the Betſey taken, or to add thereto, by endeavouring to take the ſloop alſo.

The only circumſtance which hath a direct tendency to criminate captain Angus, is his ſigning the orders to the prize-maſter put on board the Betſey, directing to "keep to the ſouthward, for fear of falling in with the Argo:" There are two ways in which this may very naturally be accounted for, neither of which are in the leaſt contradicted by the teſtimony, viz, that in the hurry of the tranſaction, the boat waiting along ſide, the ſea rough, and night coming on, he ſigned theſe orders without reading them, having confidence in thoſe who had drawn them up and ſigned before him; or, according to his laſt concluſion, "if the brig was prize, the ſloop muſt be ſo too," he ſtill conceived the Argo to be an enemy, and therefore to be avoided by the prize-maſter.

But, without having recourſe to ſurmiſes, I am clearly of opinion that the libel is not ſupported by the teſtimony; that is, there is not ſufficient proof that the reſpondent "did wilfully and knowingly, and without probable cauſe of capture, join

with others, in taking from Silas Talbot his prize and booty of war."

It is manifeſt, indeed, from the records of the court of appeals, that the libellants have ſuffered conſiderable damage in conſequence of this tranſaction at ſea. But, as they had embarked themſelves in a ſuit with real wrong-doers, and ſuffered judgment to go againſt them on general principles, without attempting any ſeparate defence, this is no reaſon why Angus ſhould not bring forward ſuch ſpecific teſtimony with regard to his own conduct as may exculpate him from the charges laid in the preſent libel.

Some ſtreſs has been laid on a paſſage in the depoſition of W—— D——, exhibited in Talbot's cauſe, tending to prove that Angus was not ſo ignorant of the circumſtances reſpecting the Betſey and Argo, as he pretends. The paſſage is in theſe words: "Afterwards, captains Prole, Angus, and Thompſon, in the preſence of this deponent, conſulted what they ſhould do with the brig Betſey, and being of opinion," &c. Whatever weight this depoſition might have had in Talbot's cauſe, it is inadmiſſible in the preſent; but I would obſerve that this circumſtance is not ſupported by any other teſtimony on the records of this

this court: on the contrary, from the general hiſtory of the tranſaction, there ſeems to have been no period of time in which Angus could have left his veſſel, or the other captains have been on board the Hibernia to hold this conſultation; W—— D—— muſt therefore have been miſtaken. Indeed this is not the only circumſtance in which he is ſingular. For juſt before, he ſays, "The brigs Achilles and Hibernia endeavoured to ſpeak her (meaning the Argo) but could not come up with her. And, upon the ſaid Churche's ſaying, that captain Talbot was not a man that would run from *one* of them if they would not both chaſe, the brig Achilles then chaſed alone."

Now, the whole current of teſtimony agrees in this, that it was the Hibernia and not the Achilles that chaſed the Argo. And as I remember, in ſome ſtage of Talbot's ſuit, it was urged as an aggravating circumſtance againſt the owners of the Hibernia, that their captain was employed in driving off the Argo, whilſt her confederates were plundering her prize.

These obſervations on W—— D——'s depoſition cannot directly affect the preſent queſtion, becauſe that depoſition is not an exhibit in this cauſe; but I mention them, becauſe if I could find

any ſubſtantial ground that Angus was indeed *particeps criminis* with Prole and Thompſon, or that he knew, or had any opportunity of knowing, the circumſtances which ſhould have prohibited them from making that unfortunate capture, I ſhould not be ſo clear as I now am in adjudging

THAT the bill in this cauſe be diſmiſſed, and that the libellants pay the coſts of ſuit.

THE libellants; appealed and after long argument, the court adjudged in June 1785, that John Angus ſhould pay to the appellants, £.948:15:10, with intereſt thereon, from the 22d day of January 1785.

LIE-

LIEBART, BAES, DURDEYN, & Co.

verſus

THE SHIP EMPEROR.

THIS is a ſuit brought on a bottomry bond, given by John Walſh to the libellants at Oſtend, whereby he hypothecates the ſhip Emperor, of which he was then the captain, for 4500 florins, equal to £.409:1:9 ſterling money of Great Britain, advanced for repairs of the ſaid ſhip. Whereupon James Oellers, the owner of this ſhip, and others, his aſſignees, come in, and anſwer to the libel, alledging that this bottomry bond ought not to take effect *as an hypothecation according to the maritime law.*

THE power veſted in a maſter of a veſſel to impawn his owners ſhip or goods for neceſſaries furniſhed in a foreign port, is a legal indulgence, founded on the urgency of the caſe, and is for the general benefit of commerce.

THERE are few rules of law more ſtrictly defined than this of hypothecation, and none in which the reaſon and intention of the law are more manifeſt: it is thus delineated.

" A maſter of a ſhip hath no power to take up money by bottomry, in places where his owner or owners dwell." " But when a maſter is out of the country, and where he hath no owners, nor any goods of theirs, nor of his own, and cannot find means to take up by exchange, or otherwiſe, and that for want of money the voyage might be retarded or overthrown, monies may be taken up upon bottomry."—*Molloy*, book II. chap. ii. ſect. 11." —" And the money ſo taken up by the maſter, is done upon great extremity, and that for the completing of the voyage, when they are in diſtreſs and want, in ſome foreign parts."—Sect. 12.

ALL the books agree in the ſpirit of this doctrine. The extreme neceſſity appears every where to be the *reaſon* of the law, and the *intention* to favour commerce. Let us now take a view of the preſent caſe. The leading facts appear from the teſtimony exhibited, to be theſe:

THE ſhip *Emperor*, John Walſh maſter, belonging to James Oellers, of Philadelphia, ſailed for Oſtend,

Oſtend, with a cargo of tobacco on board: the ſhip and cargo being conſigned by the owner to *Bine, Overman* and *Company*, merchants at *Oſtend*. During the voyage the veſſel was ſo much damaged by a ſtorm at ſea, that the captain was obliged to put into Dover in England, in diſtreſs. From Dover, the captain ſent immediate notice of his ſituation to the conſignees at Oſtend, and they ſpeedily furniſhed him with a credit on London, by which he raiſed money ſufficient to refit the ſhip. After this he ſailed from Dover, and arrived at Oſtend, where the conſignees took charge of the ſhip and cargo.

Before the veſſel arrived at Oſtend, *Bine, Overman*, and *Co.* had accepted bills to a conſiderable amount, drawn upon them by *Oellers*, on the credit of this conſignment. Upon cloſing all accounts, Bine, Overman, and Co. found that Oellers had not only drawn upon them to the full amount of the cargo and freight, ("the tobacco not ſelling ſo well as was expected") but that there remained a conſiderable ballance in their favour. To ſecure this ballance, they tell captain Walſh that he ſhall not leave the port, unleſs he will repay them the monies advanced at Dover for repairs, or hypothecate the ſhip. It was not in captain Walſh's power to do the one, that is, to repay

the money, and he declined the other propoſal for ſome time: but finding expences accumulating, and that he could not ſail without ſome accommodation, he at laſt conſented to hypothecate the ſhip. Bine, Overman, and Co. then recommended him to *Liebart*, *Baes*, *Durdeyn* and *Co.* telling him that they would lend money on bottomry; and conducted him to their houſe, where he executed the bottomry bond now in queſtion. But no money was paid to Walſh; for the bills for repairs at Dover had been long ſince diſcharged by the produce of the credit on London.

After this, Bine, Overman, and Co. permitted captain Walſh to ſail, and in due time he arrived at Philadelphia.

During theſe tranſactions, Oellers had failed, and aſſigned this ſhip to his creditors; and the queſtion now is—Whether this bottomry bond ſhall operate to the excluſive ſecurity of the merchant's at Oſtend, againſt all other creditors, as a genuine hypothecation would do, on the principles of the maritime law?

After a careful conſideration of the circumſtances of the caſe, I cannot diſcover one real feature of that rule of law which ſhould be the ground

of

of the preſent ſuit. True it is, that the ſhip was in neceſſity, and ſo is evey ſhip that wants eſſential repairs. But the owner had credit within reach. The conſignees were not far diſtant. The application was eaſy and certain, and the conſignees no ſooner heard of the diſaſter, but they furniſhed the means of relief. In fact, Bine, Overman, and Co. had the ſtrongeſt inducement to exert themſelves in getting the ſhip repaired at Dover, that ſhe might get round to Oſtend; for they had made themſelves anſwerable for Oellers's bills upon the credit of this cargo. It was, therefore, of importance to them, that the cargo ſhould arrive ſafe to their hands. So that inſtead of advancing money to a diſtreſſed ſtranger, they were only taking care of their own ſecurity. This motive is manifeſt by their letter to Walſh at Dover; and ſtill further by their ſubſequent conduct: for after they had diſpoſed of the cargo, and found a ballance due from Oellers to them, they inſiſt that Walſh ſhall not fail, unleſs he will hypothecate the ſhip to Liebart, Baes, Durdeyn, and Co. which from all appearances ſeems to be the ſame thing as hypothecating her to themſelves: for the captain received no money from Liebart, Baes, Durdeyn, and Co. who were not at all intereſted in the tranſaction, and whoſe names were only made uſe of to

ſave

ſave appearances. For Bine, Overman, and Co. well knew, that being conſignees, the captain had no power to hypothecate the veſſel to them. And, in order to give the bottomry bond the face of a genuine hypothecation, they ſelected from the general account, the monies ſpent for repairs at Dover, and compelled the captain to hypothecate his ſhip, *as for thoſe particular charges*, to the libellants, who had not advanced one ſhilling towards that expence.

FURTHER, if we look into the accounts, we ſhall find, that, although this voyage was not a very ſucceſsful one, yet the ſhip cleared all charges accrued after ſhe ſailed from Philadelphia, even including the repairs at Dover. But Oellers had drawn upon Bine, Overman, and Co. on the credit of the future voyage, long before the ſhip ſailed from Philadelphia, to raiſe money to fit her out; and it is theſe drafts brought into account which make a ballance due to the conſignees. So that, inſtead of an hypothecation made to enable a ſhip to complete her voyage, it was, in fact, made to enable her owners to begin one; which was never the object of the maritime law in caſes of hypothecation. Neither was this law ever deſigned to give partial advantages in mercantile connections, or ſecure the ballance of a running account

count between owners and conſignees, to the excluſion of other creditors.

THE importance of the preſent deciſion to the commercial character of our country, has been ſtrongly urged in favour of the libellants. But I am not apprehenſive on this account. The queſtion in view is not to be determined by any municipal law of the country, but by a general law, univerſally received and underſtood. And I am of opinion, that our national character would be much more likely to ſuffer by an adjudged precedent, which might open a door for dangerous colluſions, by putting it in the power of captains of veſſels to ſaddle their owners with unneceſſary obligations, or to give an unfair advantage to foreign creditors, by a fraudulent uſe of that pre-eminent lien which the law lays on a ſhip and goods, properly hypothecated.

I do not mean to inſinuate that there has been any fraud or colluſion in the preſent caſe. It is enough, that I do not find the claim of the libellants within the ſpirit or intention of the maritime law: and, therefore, I adjudge,

THAT the bill be diſmiſſed, and that the libellants pay the coſts of ſuit.

FROM

FROM this deciſion there was an appeal to the high court of errors and appeals. The cauſe was again argued there, but the judgment of the court of admiralty was confirmed.

THE following notes, taken at the time, contain the ſubſtance of the judgment given in the high court of errors and appeals in the above cauſe.

THE court obſerved, that the power of a maſter to hypothecate his owner's ſhip, was a neceſſary, but ſometimes a dangerous power—the court was unwilling to extend this power farther than the law ſtrictly authoriſed—a genuine hypothecation ought to be the *voluntary* act of the maſter, at the time when, and in the places where, the monies were advanced for neceſſaries or repairs—the money advanced, ought to be ſolely on the faith of the hypothecation, and not on any perſonal credit —theſe are incontrovertible principles—the preſent caſe not applicable to them—although the hypothecation was made to Liebart, Baes, Durdeyn, and Co. yet it was to ſecure monies advanced by Bine, Overman, and Co. the conſignees— No authority ſhewn, and no authority can be ſhewn, becauſe none ought to be, that an hypothecation can be made to a conſignee. Great miſchiefs might ariſe if captains could hypothecate

to

to conſignees; no authority produced to prove that an hypothecation can be made in any port, but that in which a veſſel firſt arrives after the diſtreſs and damage ſuſtained. Bine, Overman, & Co. did not repair the veſſel on the faith of the hypothecation; but this hypothecation was made to ſecure to conſignees the balance of a running account.

THE court is unanimous in confirming the ſentence of the admiralty.

TURNBULL, AND OTHERS,

verſus.

THE SHIP ENTERPRIZE.

THE bill in this cauſe is filed by certain merchants againſt the ſhip Enterprize, for the recoveries of monies advanced by them to the captain of the

the ſaid ſhip in the port of Philadelphia, to fit her out for an intended voyage. The oſtenſible or real owners, or ſome of them, being at the time of ſuch advancements within the ſtate, and known to the libellants.

AND it has been urged in ſupport of the libel, that every contract of the captain for neceſſaries for a ſhip implied an hypothecation, and induces a lien on the ſhip in favour of the creditor, ſueable in the admiralty by the rules of civil law: and the caſe principally relied upon as authority for this doctrine, is cited from Cowper, p. 636.

THE caſe referred to, is a ſuit at common law, brought by a rope-maker againſt the owners of a ſhip, for ropes furniſhed to the captain. The plaintiff having charged *Harwood* (the captain) and the owners of the ſhip, for the ropes, without naming, or even knowing who the owners were.

THE fact was, that the owners, according to the cuſtom of the county of Eſſex, in England, where they probably reſided, had leaſed the ſhip to Harwood for a term of years on certain conditions—and the queſtions were, Whether under theſe circumſtances, Harwood was not both captain and owner during the term? And whether the original

original owners ought to be reſponſible for debts contracted on account of the ſhip, whilſt in the poſſeſſion of Harwood under the leaſe?

LORD MANSFIELD was of opinion, that neither the leaſe, nor the ignorance of the creditor as to the names or perſons of the owners, could exonerate them. And to ſhew that the owners are bound, he ſays.—"Suppoſe the ſhip had been impounded in the admiralty, and *that* had happened at the end of the term, the owners could not have had their ſhip without paying the debt for which ſhe had been impounded."

BUT this caſe is brought into view chiefly becauſe Lord Mansfield in giving his opinion, obſerves, that the creditor had three ſecurities for his debt, viz. the perſon of the captain with whom he contracted the *ſpecific ſhip*, and the owners.

IT ſhould be remembered, however, that this was a ſuit at common law; that the owners, the ſhip, the captain, the creditor, and the contract, were all within the realm. And there can be no doubt but that the creditor might have his action at law, either againſt the perſons of the contractors, or might attach their property, the ſhip, for his debt.

BUT

But this caſe has no reference whatever to the the maritime or civil law. The doctrine of hypothecation is never once mentioned, nor is the contract of the captain at all placed upon that ground. The principle object was to determine whether the leaſe of the ſhip did not exonerate the leſſors during the term.

So in the caſe cited from Vezay. p. 154. This alſo was purely a common law proceſs; wherein the parties, and the whole tranſaction, appear to have been *infra corpus comitatus.* "Certainly, ſays the lord chancellor, by the maritime law, the maſter hath power to hypothecate the ſhip *during the voyage, and from the neceſſity of the caſe;* but it is different where the ſhip is infra corpus comitatus, and the contract made by the owners or maſters on land, and not ariſing from neceſſity, then the laws of the land muſt prevail." And this is conſonant with the whole current of authorities reſpecting a maritime hypothecation, viz. that it muſt be made during the voyage, and from the neceſſity of the caſe.

When money is borrowed on the ſhip before the voyage is begun, the ſhip is not anſwerable in the admiralty—1ſt Raym. 578. So in 2d. Raym. 982. in the caſe of Johnſon verſus Shippen, chief juſtice

juſtice Holt ſays—"If a ſhip be hypothecated before a voyage begun, *that* is not a matter within the juriſdiction of the admiralty; for it is a contract made here, and the owners can give ſecurity to perform the contract."

It appears then to be a ſettled doctrine, that a ſhip cannot be hypothecated, according to the maritime law, before the voyage is begun, or in places where the owners reſide, even for thoſe neceſſaries without which the ſhip could not proceed to ſea. The law means to favour the completion, not the commencement of a voyage.

For this reaſon the legiſlature of Pennſylvania hath, *by a ſpecial act*, given to the artificers, who build or repair, and to thoſe who furniſh neceſſaries to fit out a ſhip for ſea, a lien on the veſſel ſueable in the admiralty before the voyage is begun, becauſe the maritime law does not extend to their ſecurity.

Since then, it appears that the advance of monies to fit out the ſhip Enterprize, was made before the commencement of her voyage, and not from neceſſity, and that the captain, the owners, or ſome of them, and the contractors were all within the ſtate at the time of the tranſaction; and

as

as the ſuit is not brought under the act of aſſembly of the 27th of March, 1784, I cannot admit this caſe to be of admiralty juriſdiction, and therefore I adjudge

THAT the bill be diſmiſſed, and the libellants pay the coſts of ſuit.

Auguſt, 1785.

EDWARD FORBES *verſus* THE BRIG HANNAH: ANDREW HODGE, RESPONDENT.

EDWARD FORBES of Dublin, in Ireland, has libelled againſt the brig Hannah, for the amount of certain bonds of bottomry, which Francis Lewis, then captain and principal owner of the veſſel, gave as ſecurity for monies advanced by Forbes, in the port of Dublin, for neceſſaries, as it is ſaid, for the ſaid brig, and to enable her to complete her voyage.

THE circumſtances of this caſe appear from the teſtimony to be theſe:

FRANCIS LEWIS, principal owner of the brig Hannah, had chartered her to one *Varlo*, for a voyage from ſome port in America to Dublin in Ireland. Varlo himſelf went paſſenger with his goods, and Lewis was captain for the voyage. After their arrival at Dublin, Lewis borrowed money of Forbes, at three ſeveral times, for which he gave three bonds of bottomry on his brig, amounting, with premium and charges, to £.214:0:8 ſterling money of Great Britain. Forbes then put a cargo on board the brig, in which it ſeems that Lewis was concerned, as he was to have one-half of the nett profits of the adventure, excluſive of freight, and to be anſwerable for one-half of the loſs, if any there ſhould be, on the ſales. Lewis left Dublin with his cargo, bound for Boſton in America. It does not appear whether ever he arrived at Boſton, or what he did with his cargo; but in April laſt he brought the brig into the port of Philadelphia, at which time ſome of his mariners ſued in this court for wages due, and the brig was attached and condemned for thoſe wages, amounting to £.29, Lewis making no plea of defence againſt the libel. In conſequence of this libel and ſentence, a writ iſſued to the marſhal,

in the uſual form, directing him to ſell the brig Hannah, with her tackle, apparel, and furniture, *or ſuch parts thereof*, as might be neceſſary, to ſatisfy the decree in favour of the mariners, together with the charges and coſts of ſuit. But Lewis requeſted the marſhal to ſell *the whole* of the veſſel, with her tackle, &c. under the decree, and even endorſed this requeſt on the writ of ſale. And to ſhew that he was the ſole owner of the brig at that time, he exhibited to, and lodged with the marſhal, an aſſignment or bill of ſale from one Simpſon, who had been a part owner, of all his intereſt in the brig, to Lewis.

Andrew Hodge, reſpondent in this cauſe, purchaſed the veſſel at the marſhal's ſale, and paid down the full conſideration money, out of which the marſhal deducted the mariners wages, with charges and coſts of ſuit, and paid the balance to Lewis as ſole owner. After this, Lewis went off without ſaying any thing of the bottomry bonds he had given to Forbes in Dublin. And now theſe bonds have come over, and Forbes has attached the brig in the hands of Hodge the purchaſer.

On theſe circumſtances, two queſtions have ariſen, viz.

First,

Firſt, WHETHER theſe bottomry bonds have hypothecated the veſſel, according to the rules of maritime law, ſo as to bring the cauſe within admiralty juriſdiction?

Secondly, SUPPOSING it to be ſo, whether the ſale and purchaſe, under the authority of this court, have not veſted the property in the reſpondent, exonerated of all prior engagements?

To determine the firſt point, it will be neceſſary to conſider the characteriſtic marks which diſtinguiſh an hypothecation, according to the maritime law, from a common bottomry bond or mortgage, according to the cuſtom of merchants, cognizable by the common law.

By the maritime law "a maſter of a ſhip hath "no power to take up money by bottomry in pla- "ces where his owners dwell; but when he is "out of the country, and where he hath no ow- "ners, or any goods of theirs, or his own, and "cannot find means to take up, by exchange or "otherwiſe, and that for want of money, the voy- "age might be retarded or overthrown, monies "may be taken up on bottomry." *Molloy*. B. II. Ch. xi. Sec. 11.

FROM this it appears, that the true grounds of a maritime hypothecation are the *neceſſity* of the caſe, and the *want of perſonal credit.* Wherever this doctrine occurs in the books, theſe two circumſtances are ſtrongly pointed at. Thus, in 3d. *Mod.* 244, "The reaſon of the civil law, which allows the pawning of a ſhip for neceſſaries upon the high ſeas, ſeems to be plain, becauſe there may be an extraordinary and invincible neceſſity to which the admiralty juriſdiction is limited: for if the law ſhould be otherwiſe, the maſter might take as much money as he will." And ſo the court, in that caſe, ordered a trial on the neceſſity.

So alſo, in *Bridgeman's* caſe—Hob. 12. a prohibition was granted, becauſe the impawning was not ſhewn to be *occaſioned by neceſſity.*

IN 1ſt. *Magens*, there is a report of an admiralty ſuit on a bottomry bond, at the concluſion of which, p. 329. the author ſays, "Perſons living in ſea ports may learn from this caſe, not to believe or truſt too eaſily a captain they do not know; and when they propoſe benefiting themſelves by lending money on bottomry to ſuch whoſe diſtreſſes oblige them to ſeek it, the lenders, for their own ſatisfaction and ſecurity, ought to have

have proofs given *that there was a neceſſity* for ſuch an advance, and that the money had actually been employed for the purpoſes alledged."

FURTHER, the impawning muſt be in foreign parts; that is, where neither the owner, nor maſter hath any perſonal credit: for this conſtitutes an eſſential part of the neceſſity—"The maſter can have no credit abroad but by hypothecation." Salk. 35.—"Where a ſhip in diſtreſs is forced into any port where her owners have no correſpondents to ſupply the maſter with the money neceſſary to enable him to proſecute his voyage, he may take it on bottomry from thoſe will advance it on the eaſieſt terms." 1ſt. *Mag.* 27.

THE reaſon is, the maritime law requires, that the monies ſhould be lent ſolely on the credit of the ſhip, and that the ſecurity of the lender ſhould depend altogether on her ſafety: and therefore, if ſhe be well engaged, that is according to the principles ſtated, ſhe ſhall be for ever obliged till redemption—Molloy book II. ch. ii. ſec. 15. And therefore alſo, becauſe of the hazard, an unuſual intereſt is allowed on the monies advanced.

SUCH are the principles which deſignate a maritime hypothecation within admiralty juriſdiction.

BUT bottomry bonds may be given by owners for ſecurity of mercantile or other debts; and theſe may be executed either in places where the owners dwell, or in foreign parts, by their order. They may be formed under a variety of circumſtances, and depend on many contingencies, according to the conditions or terms of the deed or contract.

IT ſhould ſeem by the *neceſſity*, ſo frequently urged as the ground of a maritime hypothecation, that the ſhip ſhould be driven by diſtreſs into ſome other port than that of her deſtination; or, at leaſt, that ſome extraordinary caſualty ſhould occaſion an unforeſeen and inevitable expence in the port of her voyage. Becauſe it is hardly to be ſuppoſed, that an owner would ſend his ſhip, much leſs that he would take her himſelf, to a place where he could not command either money or credit for ordinary repairs and ſupplies.

IN the preſent caſe it does not appear, nor has it been ſuggeſted, that any extraordinary circumſtances occaſioned an unforeſeen neceſſity. The captain (Lewis), who was alſo principal owner, arrives

rives after a proſperous voyage at the port of deſtination with his freighter on board. Here the voyage is completed, and it may be preſumed that he there received his freight. If ſo, he could not be without money ſufficient to refit his veſſel for a new voyage. And that he was not without perſonal credit is manifeſt, becauſe Forbes entruſted him with a new cargo, and agreed to allow him 35/o Iriſh money per ton for freight on all the goods he ſhould deliver: and alſo one half of the nett profits ariſing from the ſale of the cargo, he to run one half of the riſk of loſs. This mercantile connection ſhews at leaſt that Lewis was in ſome credit with Forbes.

Besides, if we look into the accounts, we ſhall find the firſt article charged is £.32 : 5 : 6 ſterling paid to Varlo, by Lewis's order, to take up and cancel a former bottomry bond. It ſeems ſtrange that Lewis, after navigating Varlo and his goods acroſs the ſea, ſhould fall in his debt. This circumſtance is not at all accounted for. But be it as it may, Forbes ſhould certainly have forwarded his former bottomry bond, with an account of the occaſion and expenditures for which it was given, that a judgment might have been formed whether it was a proper hypothecation or not:

or

or have ſhewn that the brig was under condemnation of the admiralty at Dublin on account of that bond; and that the £.32 : 5 : 6 was paid for her redemption.

Upon a view of the circumſtances of the preſent caſe, I do not find them ſuch as the maritime law requires to conſtitute a genuine hypothecation within admiralty juriſdiction. This point being concluſive, it is unneceſſary to determine on the ſecond general queſtion.

I adjuge that the bill in this cauſe be diſmiſſed; and that the libellants pay the coſts of ſuit.

MANUEL

MANUEL SAGAS DE CANIZARES

verſus

THE SANTISSIMA TRINIDAD.

JUAN JOSEPH DE AGUIRE PEREZ, *Reſpondent.*

THE libel in this cauſe ſtates two ſeparate claims of Canizares, the complainant, againſt the brigantine Santiſſima Trinidad: the one founded on an hypothecation of the ſaid veſſel, made by the then captain to Santiago Cupiſono at Havannah, for two hundred dollars advanced by the ſaid Cupiſono for neceſſaries for the ſaid brigantine, as it is ſaid, and to enable her to proſecute her voyage; which inſtrument of hypothecation is endorſed or aſſigned over by the lender to the preſent libellant: and the other, founded on a written contract between Nariſco Sanchez y Serna, then captain of the veſſel, and Canizares the libellant, reſpecting the wages he ſhould receive for ſerving as pilot and mariner on board the ſaid brigantine in her voyage from Havannah to Philadelphia. As theſe claims ariſe from different contracts,

tracts, it is manifeſt that they muſt be ſeparately conſidered.

To determine on the force of this inſtrument of bottomry, I ſhall firſt ſtate the circumſtances neceſſary to a genuine hypothecation, according to the maritime law; and then take a view of the hiſtory of this veſſel's voyage, and her ſituation at Havannah when Cupiſono advanced the money in queſtion.

As to the firſt, I have had occaſion in three former ſuits in this court, to ſtate the law of a maritime hypothecation, and have not ſince found reaſon to alter my opinion of the principles on which thoſe cauſes were decided. The cauſes to which I refer were Liebart, Baes, Durdeyn and Co. againſt the ſhip Emperor, Turnbull againſt the ſhip Enterpriſe, and Forbes againſt the brig Hannah. I can only now repeat the ſubſtance of what was then obſerved.

[*Here the judge recapitulated the doctrines advanced, and the authorities cited, in the caſes referred to.*]

I ſhall now ſtate the hiſtory of the voyage of this brigantine, as the ſame may be deduced from the teſtimony.

It appears that this veſſel had been chartered on account of the king of Spain, and was to ſail from Philadelphia to Carthagena with a cargo of flour which was to be ſold there, and a cargo of dyewood purchaſed and brought back to Philadelphia, or ſome port of the United States. Such was the deſignated voyage; but it ſeems the captain, inſtead of returning to Philadelphia from Carthagena, went to Jamaica with an adventure of his own; to what amount does not appear: that at Jamaica he purchaſed dry goods fit for the Havannah market, and then took the brig to Havannah, where he diſpoſed of the goods he had bought at Jamaica upon his own account: that at Havannah he borrowed two hundred dollars of Cupiſono, and executed the inſtrument called the hypothecation, to engage the veſſel and her freight for this ſum: that part of this money was expended in paying wages to the mariners, and part in ſupplying them with freſh proviſions: that the veſſel was refitted at the king's arſenal, and at the expence of the intendant: and that ſhe ſailed for, and arrived at the port of Philadelphia.

I agree with the council for the libellant, that the validity of an hypothecation ought not to depend on the regularity of the captain's conduct with reſpect to his owners, previous to the time

of

of his arrival in a foreign port, and borrowing money for the relief of the ſhip's neceſſities; and will go further, and ſay, that neither ought it to be affected by the captain's ſubſequent conduct; provided the lender was in no wiſe privy to, or knowingly aſſiſtant in his obliquities.

It has been urged on the other ſide, that the law of hppothecation was deſigned ſolely for the benefit of the owners, and an inference drawn, that if it can be ſhewn, that the owners of a veſſel have not been benefited, but injured by the captains conduct, and conſequent hypothecation, it ought not to be allowed. But this law has for its object the good of commerce in general. And no ſtranger would lend money on hypothecation if his lien on the ſhip was to be invalidated by ſome future proof that the voyage was irregular, or that the captain had deviated from the orders of his owners, and injured their intereſt, either before or after the hypothecation made.

But where ſhall we find, in the preſent caſe, that *neceſſity* which ſhould juſtify the captains conduct, and be the ground of a genuine hypothecation? This veſſel was chartered for the uſe of the king of Spain by his agent: the cargo on board was on the king's account, and ſhe arrives in a leaky

and

and diſabled condition in one of his Majeſty's ports, where he had an officer ſtationed. This officer, the intendant, orders the veſſel to the public warehouſe to be diſcharged, and then round to the king's arſenal to be repaired; all which was done at the king's expence. In truth, I cannot conceive a caſe of leſs neceſſity, or one wherein a more certain and able relief could be depended upon.

But it is ſaid, that there were conſiderable delays before the intendant interfered; and that the captain was obliged to ſend in five or ſix memorials, and in the mean time the mariners were in great want of wages and freſh proviſions; and that in this neceſſity the captain applied to Cupiſono for two hundred dollars, who refuſed to lend them unleſs the veſſel ſhould be hypothecated for his ſecurity.

It is in teſtimony, however, that this money was lent by Cupiſono before the captain had made any application to the intendant, and therefore, the neglect of the intendant could not have occaſioned the neceſſity of borrowing from Cupiſono: that the captain of a veſſel in the king's ſervice, and in one of his majeſty's ports, ſhould not find credit for a few days proviſions until the proper officer could

could be applied to, is too incredible to be ſeriouſly admitted: ſtill leſs can it be a legal ground for an hypothecation, that the mariners muſt have wages paid to them in a place where it does not appear that any wages were due; nor is it probable that any could be due, becauſe this was neither the concluſion of the voyage, nor even a port of delivery.

THE money ought to have been lent ſolely on the faith of the hypothecation and not on any perſonal credit: but here was a ſtrong and well founded credit; for it is in the proof that Cupiſono knew that this veſſel was chartered for the king's ſervice; and it is expreſsly ſaid, that the money was borrowed to pay wages and procure freſh proviſions—"*until money could be had from the intendant.*"

FURTHER, in the quotation from Molloy B. II. ch. xi. ſec. 11. it is ſaid—"When a maſter is out of the country, and where he hath no owners, nor any goods of theirs, *nor of his own.*"—Now it is confeſt that the captain had goods of his own, and, as it ſhould ſeem, to a conſiderable amount, ſince it was ſufficient to induce him to violate his duty to his employers, in taking the veſſel, contrary to their orders, on a trading voyage to Jamaica

for

for his own benefit; that at Jamaica he bought goods ſuitable for the Havannah market, and actually ſold them at the Havannah though contraband; and that Cupiſono, the lender, was privy to theſe circumſtances. So that inſtead of the lender's having the veſſel alone to look to for his ſecurity, he had two ſubſtantial perſonal credits to depend upon, viz. the intendant, from whom he might reaſonably expect repayment of monies advanced for the uſe of a veſſel in the king's employ; and the captain, whoſe property he might have attached before he left the iſland, if ſatisfaction was not made. This circumſtance alone, that is to ſay, Cupiſono's knowledge that the captain had property of his own on the ſpot, ſufficient to anſwer the preſent exigencies of the veſſel, would have invalidated the bond as a maritime hypothecation, inaſmuch as it removes that *neceſſity* which the law requires.

THERE is a circumſtance in the preſent caſe, which although not in itſelf concluſive, forms too ſtriking a feature in the tranſaction to paſs unnoticed. A ſingularity in a maritime hypothecation is, that the law allows an extraordinary premium or intereſt to the lender, to any extent, according to the riſk to be run; becauſe, if the ſhip ſhould be loſt, the money lent is loſt with her. But

here, a ſtranger lends two hundred dollars to a captain in diſtreſs without even ſtipulating for common legal intereſt for the uſe of his money: I ſay, this alone might not be concluſive againſt the hypothecation, becauſe a man may be as generous as he pleaſes; but in connection with the other circumſtances, it gives room for ſuſpicion, that the engagement of this veſſel to Cupiſono was not made within the rules or ſpirit of the maritime law.

For the above reaſons, I adjudge that the bill in this cauſe be diſmiſſed, ſo far as the ſame hath reſpect to a claim of two hundred dollars, ſaid to have been lent on the credit of the brigantine Santiſſima Trinidad.

I am now to conſider the libellant's demand of wages for ſerving as pilot and mariner on board this veſſel from Havannah to Philadelphia.

This claim for wages, amounting to £.87:5:0, is founded on a written contract made at the Havannah between Nariſco Sanchez y Serna, then

then captain of the veſſel, and Canizares the libellant.*

But it has been contended, that as this agreement is in writing, and bears a ſeal, and is not, according to the terms thereof, in the uſual way of agreeing for mariners wages, it becomes a ſpecial contract, and is not properly of admiralty juriſdiction.

* *Copy of the Account annexed to the Libel.*

"The brigantine Santiſſima Trinidad, to Manuel Sagas de Canizares, - - - - *Dr.*

1788.	£.	s.	d.
Dec. 19.			
To caſh lent in Havannah to captain Nariſco Sanchez y Serna, commander of the ſaid brigantine, by Santiago Cupiſono, - -	75	0	0
To 5 months and 19 days wages, from July 1, to Dec. 19, at 7*l.* 10*s.* - -	42	5	0
To 3 months pay, agreeable to contract, -	22	10	0
To his paſſage to Havannah, - -	22	10	0
	162	5	0
Received in Havannah 2 months advance,	15	0	0
	147	5	0
To 1 month's boarding Mr. Canizares has been obliged to find,	5	12	6
	152	17	6

Its being in writing, however, is no more than a teſtimony or memorandum of the agreement made, and does not affect the juriſdiction of this court. What is called a ſeal appears to be nothing more than a printed ſtamp, for which a duty is paid to the crown: certainly it is not the ſeal of the parties, or of either of them. But, as to the terms of the contract, theſe are indeed out of the uſual courſe, and deſerve conſideration.

One of the reaſons for allowing mariners to ſue in the admiralty is, that the debt ariſes from ſervices performed, or to be peformed at ſea, and a lien on the ſhip given to them for their ſecurity, becauſe the contract they make is ſuppoſed to be on the credit of the ſhip.

Now, although the wages of twenty dollars per month, promiſed in the preſent caſe, appear to be extravagant, yet, as the difficulty of getting a perſon qualified to ſerve both as a ſkilful pilot and able mariner might have been great, I think the rate of wages per month ought to be allowed as contracted for. But I cannot, upon any principle, allow that a captain hath a power to bind his owners and their veſſel to the payment of a mariner's wages for three months after his diſcharge, and after all ſervices at ſea and elſewhere have ceaſed.

If

If he could legally do this for three months, why not for ſix or twelve; or even ſaddle his owners with an annuity for life to a mariner for a few weeks actual ſervice? How far the common law might conſider this contract as binding on the captain perſonally, it is not my buſineſs to ſay; but as judge of admiralty, I ſhall be far from doing my part towards eſtabliſhing a precedent by which captains, in addition to the great power they neceſſarily have over the property of their employers, may have that of obliging them to the payment of unlimited ſums for an unlimited time. The captain might have engaged for his owners to pay wages per month during the ſervice, or a ſpecific ſum for the run to any amount juſtifiable by the circumſtances and neceſſities of the caſe; but to bind the owner to periodical payments to a mariner after a total diſcharge from the ſervice, is what I believe no captain of a veſſel ever before attempted. For whether this was to be paid all at once, or at three ſeveral times, it matters not; the contract is for *three months wages after diſcharge*.

There is another claim under this contract for ſixty dollars to take the libellant back to Havannah on being diſcharged here.

THE maritime cuſtom is, that if a maſter or owner diſcharges a mariner in a foreign port, before the completion of the voyage for which he engaged, ſome reaſonable allowance ſhall be made, over and above the wages due, to enable him to return to his own country, or go to the port, which by the articles, ſhould have completed the voyage; and this allowance isuſually the amount of one month's wages: and it is a reaſonable cuſtom, where the mariner is willing to perform articles, and finiſh the voyage, but the maſter or owner thinks fit to diſcharge him ſooner for their own convenience, and without juſt cauſe of complaint againſt the mariner. Therefore this part of the contract before us is conſiſtent with maritime cuſtom, but certainly unreaſonable as to the ſum promiſed.

WHATEVER power a captain may have by law to bind his owners by contracts made abroad for the ſervices of the ſhip, yet he cannot oblige them beyond what is uſual and cuſtomary, without ſhewing that the unuſual charge, aroſe from the neceſſity of the caſe. The preſent charge is expreſsly made for conveying the libellant back to the Havannah: I have therefore enquired what is the uſual charge for a paſſage from this port to the Havannah,

Havannah, and find that forty dollars is an ample and generous allowance.

FRAUD and colluſion between the captain and Canizares the libellant, have been ſuggeſted, but not proved: yet if I had not found that this cauſe might and ought to be determined on general principles, there are two circumſtances in the caſe which would have induced a more ſtrict enquiry into the captain's conduct. The one, which I have already noticed, is Cupiſono's lending money on hypothecation without ſecurity, or even aſking for common intereſt, which, though a poſſible, is not a uſual occurrence. The other is a contract between the captain and Canizares, which concludes with theſe remarkable words—" Each (that is the original and copy) *having the ſame ſtrength as if they had been executed before a notary public at Havannah.*" The queſtion naturally occurs, and why was not this contract executed before a notary public at Havannah? An honeſt captain, who is reduced to the neceſſity of binding his owners to hard and uſual terms, would at leaſt take care that nothing ſhould be wanting in point of form and public notoriety to juſtify his conduct. And, beſides, I ſuſpect that this contract, which bears a printed ſeal or ſtamp, could not be legally executed according to the regulations of the ma-

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ritime laws and cuſtoms, but in the preſence of a notary or ſome public officer. But it was not neceſſary to clear up theſe appearances, as the cauſe may be decided on other grounds.

UPON the whole, I adjudge and decree, that Canizares, the libellant, have and receive from Juan Joſeph de Aguire Perez, the reſpondent, the ſum of 112 dollars and 60-90ths of a dollar, equal to £.42: 5, Pennſylvania currency: that is to ſay;

For 5 months and 19 days wages, from July 1ſt, to Dec. 19th, at 20 dollars per month,	£.42	5	0
For his paſſage to Havannah,	15	0	0
	£.57	5	0
From which deduct 40 dollars paid in advance at Havannah,	15	0	0
There remains	£.42	5	0

WITH reſpect to the £.5: 12: 6 added to the account, and charged for a month's boarding, I ſhall take no further notice of it, than to obſerve, that it is neither mentioned in the libel, nor ſupported by any voucher or teſtimony.

FINALLY,

FINALLY, I adjudge that the libellant pay one half, and the reſpondent the other half, of the coſts of ſuit.

JOHN SMITH

verſus

WILLIAM LEARD.

THE queſtion was—Whether the perſon of the captain could be attached in the admiralty, in a ſuit for mariners wages; or whether the mariner muſt look to the ſhip alone for his ſecurity? In the preſent caſe, the ſhip was not in port.

AFTER argument, it was determined, that the captain was perſonally anſwerable. 3d Ba. 593; 1ſt Salk. 33; 1ſt Molloy, 355, 356.

PAUL

PAUL ANDERSON, & AL.

verſus

JAMES FORBES, LATE MASTER OF THE DOLPHIN.

THE caſe was—The libellants engaged in the year 1782, with James Forbes, then captain of the ſhip Dolphin, for a mercantile voyage from Philadelphia to the Havannah, and back again; for which they were to receive, not monthly wages, but a ſtipulated ſum, to be paid them at the Havannah. Whilſt the ſhip was at Havannah, the Spaniſh governor of Cuba had projected a military expedition againſt the iſland of New Providence, and offered conſiderable emoluments to ſuch Americans in port as would enter their veſſels in the Spaniſh ſervice, for this expedition: viz. 10 dollars per ton for their veſſels, and a gratuity of 700 dollars to each captain. Forbes, after paying his crew the ſtipulated ſum for the original voyage, propoſed to them this new expedition: an expedition not known, or thought of, at the time of the firſt contract, and of a nature entirely different

ent from the ſervice for which they ſtood engaged to the ſhip. The mariners declined this propoſal, unleſs informed what recompence they were to have for their time and hazard in this new ſervice. Whereupon Forbes aſſured them of at leaſt 20 dollars per month to each man, and hinted further emoluments from the Spaniſh government. Thus aſſured, the mariners entered on the ſervice, and afterwards ſailed with the Spaniſh fleet, and were preſent at, and aſſiſtant in, the ſiege of New Providence.

THE only queſtion ſeems to be, whether a contract expreſsly made ſhall be fulfilled or not?

WHEN the Spaniſh governor agreed to give 10 dollars per ton for American veſſels, and a gratuity of 700 dollars to each captain, he certainly expected that ſuch veſſels ſhould be properly manned, and fitted for the ſervice. Captain Forbes knowing this, and knowing alſo that the propoſed ſervice could not, by any conſtruction, be conſidered as a part of the original voyage for which the mariners had contracted, enters upon a new treaty with them. Suppoſe theſe mariners had rejected the propoſed expedition, the captain could not have compelled them to go, but muſt have engaged other ſeamen for the purpoſe. And there could

could have been no doubt but that the crew ſhould be paid according to contract. The preſent libellants are preciſely in the ſituation the new crew would have been in, and are equally entitled.

As it is in teſtimony, that the libellants were at leaſt two months in the Spaniſh ſervice, I adjudge, that they have and receive from the reſpondent, *fifteen pounds* each; and that the reſpondent pay the coſts of ſuit, except ſuch part of the ſaid coſts as may have accrued by the taking certain depoſitions, which were not admitted as evidence, which coſts the libellants are to pay.

June, 1786.

CHARLES MORAN

verſus

ALEXANDER BAUDOIN.

THE libel in this cauſe ſtates—That Charles Moran, the libellant, entered on board the ſhip l'Heureux,

l'Heureux, at Nantz, in France, on the 23d day of October, 1786, under an engagement for a voyage from the ſaid port of Nantz to New Orleans, in the Miſſiſippi; from thence to go to Martinique, and from thence to return to France: that Alexander Baudoin, the captain, had totally altered this voyage by repeated deviations, whereby the contract was broken, and thereupon the libellant prays a diſcharge, and the amount of wages due.

THE circumſtances of this caſe, appear by the teſtimony, to be theſe:

THAT this veſſel ſailed from Nantz, October 3d, 1786: that the marines underſtood, and were informed, that this voyage was to be from Nantz to New Orleans; thence to the Weſt Indies, and thence back to Nantz, or to ſome port in France; and that it would continue from 10 to 15 or 16 months: that under this expectation, the mariners were regiſtered at the proper office at Nantz, according to the manner of regiſtering ſeamen in France: that inſtead of purſuing this voyage, as deſignated to them, they were taken three times to New Orleans, twice to Martinique, once to Aux Cayes, once to Havannah, and were now brought to the port of Philadelphia: that in the courſe of theſe ſeveral voyages, the libellant and others of the

the crew, made frequent complaints of the prolongation of, and deviations from, the originally intended voyage, and had applied to the intendants of ſome of the ports they were at, demanding to be diſcharged, or taken back to France: but were detained in the ſervice of the ſhip, by repeated aſſurances of the captain, that from the then next intended port they ſhould ſail for France: that in particular, when they were at Martinique the ſecond time, the whole crew complained and demanded their diſcharge; whereupon the captain threw the boatſwain and another ſailor into priſon: and that the boatſwain wrote to the commanding officer of a frigate there, who ſent for him out of priſon, and obliged the captain to pay him the wages due, and diſcharge him.

To this libel and teſtimony, the reſpondent hath urged in reply:

THAT no contract or articles between the captain and the crew of this ſhip have been exhibited: that the libel itſelf is deficient in form; and that let the deviations from the original voyage be what they may, the libellant hath for his part juſtified the whole, by ſigning a verbal proceſs on board the ſhip, on the 30th of April laſt, certifying that the ſhip l'Heureux had ſuffered damage by ſtorm,

and

and agreeing to put into the port of Philadelphia in diſtreſs, which verbal proceſs ſo ſigned, has been exhibited in this court.

As there is no ordinance of the United States, or act of the legiſlature of Pennſylvania touching the preſent object, the claim of the libellant, who is a French ſubject, and was ſhipped in France, will be beſt determined by the marine ordinances of the country to which he belongs, and under which he engaged in the ſervice of this veſſel. Theſe ordinances ſtrictly prohibit any captain or maſter of a veſſel from receiving on board his ſhip any mariner, as ſuch, who is not entered in his rolle d'equipage made up in the commiſſary's office, or bureau de claſſes of the port where the veſſel ſhall be. See, Ord. de Mar. vol i. p. 422. and p. 715. Now as it has not been denied but that the libellant has ſerved on board this ſhip ever ſince ſhe ſailed from Nantz, it is in vain to call upon him for proof of the contract made at Nantz, ſince the rolle d'equipage, or a copy of it, is always in the captain's hands, and never in the mariner's. Had no ſuch contract taken place as mentioned in the libel, or ſhould the libellant demand larger wages than had been agreed upon, the captain would have ſhewn the rolle d'equipage againſt him. As he has not done this, although

though in his power, it follows that the allegation of the libellant muſt be admitted as true. Indeed it is in poſitive teſtimony, that the libellant entered on board at Nantz, and was to receive fifty livers per month wages, which is ſufficient proof of a contract.

The next point is to conſider the repeated deviations from the original voyage, and how far this ſhould operate in releaſing the mariner from his contract. To lay it down as a general rule, that the leaſt deviation from a deſignated voyage ſhould invalidate the articles and diſcharge the mariners from the ſhip's ſervice, would perhaps be conſtruing thoſe articles too ſtrictly, and would certainly be very injurious to commerce. Shipping articles ought not to be judged by the ſame rules with a policy of inſurance, or a common law contract, their object and ground of reaſon being quite different. Yet groſs and unneceſſary deviations ſhall free a mariner from his engagement. But there is no preſent occaſion to fix a general rule. This cauſe muſt be determined by poſitive law: and there is an ordinance of France expreſs to the purpoſe Mar. Ord. vol. I. p. 548. art. 4.— "If at any time after the arrival and diſcharge of the veſſel at the port of her deſtination, the captain or maſter, inſtead of returning, ſhall freight

or

or load his ſhip to go elſewhere, the latter may leave her if he chooſes, unleſs it has been otherwiſe determined by his ſpecial agreement." And this rule is further inforced by Valin's commentary on the article.

THERE appears to me a ſtrong preſumption that the the boatſwain, who was paid and diſcharged at Martinique by order of the commander of a frigate there, claimed the benefit of this ordinance. It is ſaid, indeeed, that his mother was dead, and that he had buſineſs in France; but this I think would hardly be admitted as a ſufficient reaſon to diſcharge a mariner in the midſt of a voyage. It is plain that Baudoin did not deem it ſufficient, for he put the man in priſon for demanding his wages and diſcharge.

THE objections to the libel in point of form are not ſufficient to invalidate the ſuit. It is not indeed ſo ſpecific as might be wiſhed, but the ſubſtance of the complaint is alledged, viz. an engagement for a certain voyage, a total deviation from that voyage, and a citation prayed for, to ſhew cauſe why the wages accrued ſhould not be paid, and the libellant diſcharged.

THE verbal proceſs ſigned by the libellant on board the ſhip, is the next circumſtance relied upon by the reſpondent. But this cannot have the operation expected. If the ſhip was really in diſtreſs, there is no doubt but that any mariner would ſign his conſent to put into a ſtrange port to avoid impending danger, and refit the damaged rigging. But this deviation occaſioned by neceſſity cannot ſerve as a juſtification of former deviations where no ſuch neceſſity occured.

I am clearly of opinion, that if this cauſe was tried before a French court of juſtice, the libellant could not be refuſed the benefit of the mariners ordinance expreſsly in favour of his claim.

I adjudge that the libellant ſhall have his wages, at the rate of fifty livers per month, from October 23d 1786; and that the reſpondent pay the coſts of this ſuit.

June 1788.

JOHN THYBOUT

verſus

ALEXANDER BAUDOIN.

THYBOUT was a mariner belonging to the ſame ſhip and under the ſame circumſtances with Charles Moran, libellant in the foregoing cauſe, but did not join in the libel with Moran; becauſe, as it was ſaid, the captain kept him on board confined till the determination of that ſuit ſhould be known. But he now filed his complaint, claiming his wages and diſcharge.

COUNCIL for the reſpondent, in addition to their arguments in the former cauſe, alledged that the laſt voyage from New Orleans, was authoriſed by government to procure ſupplies for that city, which had juſt then ſuffered by a terrible fire; and ſecondly, that the libellant had made a new contract at New Orleans, and was entered accordingly on the rolle d'equipage there. In proof of theſe alle-

gations, copies and tranſlations of the ſhip's papers were offered in teſtimony. But the libellant's council objected to the admiſſion of theſe papers. Whereupon an argument was had on this previous queſtion. After conſideration, the judge gave his opinion as follows.

THE queſtion now before me is—Whether certain papers, preſented to the court as copies and tranſlations of the manifeſt, rolle d'equipage, &c. of the ſhip L'Heureux, reſpecting her laſt voyage from New Orleans, ſhall be admitted as teſtimony in the cauſe now in agitation, or not? And it is declared, that the deſign in procuring theſe papers is to prove, firſt, an authoriſed and neceſſary deviation from the original voyage contracted for at Nantz; and, 2dly, a new engagement made by the libellant at New Orleans.

THE correctneſs of theſe copies, and the authenticity of the originals, are ſuppoſed to be eſtabliſhed by the depoſition of Mr. John Leamy; and the fidelity of the tranſlations are certified by the notarial ſeals of ſworn interpreters.

THE fidelity of the tranſlations is, I think, ſufficiently aſcertained, becauſe the tranſlator is officially known to the court, being commiſſioned by, and

and anſwerable to government for the due execution of his truſt. But it is not ſo certain what evidence ſhall be ſufficient to authenticate the inſtruments of officers of a foreign country, ſo as to give them the force of legal teſtimony in our courts. The authorities that have been cited all refer to caſes, where the originals, the copies, and the certifying officers, were all within the realm of England, and therefore do not come up to the point in queſtion.

Mr. Leamy's depoſition as to the authenticity of theſe papers is founded on his belief only, and not on poſitive teſtimony, as appears on his croſs examination in theſe words: "The ſaid deponent "being croſs-examined, ſaith, that he does not "perſonally know any of the perſons who have "ſigned any of the original papers before men-"tioned, nor did he ever ſee any of them write: "and that he, the deponent, had no papers in "his cuſtody with the hands and ſeals of the "above mentioned perſons to them, to compare "the ſaid papers with, except the ſignature of "the preſent governor, with which he did not "compare them."

But, ſecondly, it is manifeſt, that theſe papers were copied and tranſlated in this city, pending this

this ſuit, and within the cognizance of the court. Why then were not the originals exhibited, that the tranſlations might be made by the direction, and under the authority of the court, after having had the opportunity of inſpecting theſe originals, and judging of their authenticity? It has been attempted to ſhew that this could not be done*. But as the court of admiralty is always open, and as theſe papers were in the city for at leaſt ſome days, there was time ſufficient to have them compared, copied, and tranſlated by authority. The court hath a right to the beſt teſtimony that can be procured with any reaſonable convenience; and as the originals of theſe papers were in the hands of the reſpondent's council, and they have not thought fit to file them as exhibits in the cauſe, I ſhall not now admit the copies taken by their direction. I think ſuch a precedent might have dangerous future conſequences.

The argument then proceeded on the merits, and nearly the ſame grounds were travelled over, which had been taken in Moran's caſe.

After

* The captain ſailed from the port during the ſuit, and took the original papers with him.

AFTER adviſement, judgment was given as follows:

JOHN Thybout, the preſent libellant, having ſhipped at the ſame time, and under the ſame contract, with Charles Moran, whoſe ſuit was lately decided in this court, the teſtimony exhibited in Moran's caſe has been applied to this.

THERE are only three new exhibits in the preſent cauſe: viz. a proteſt made by captain Baudoin and his officers, ſoon after his arrival at Philadelphia, dated the 17th of May laſt, and two depoſitions; one of William Matthié, a paſſenger on board the l'Heureux, and the other, a ſecond depoſition of Baſtian Gaudin, who had given teſtimony in the former cauſe. The purport of the proteſt is to ſhew, that this ſhip was driven by a N. N. E. ſtorm into the port of Philadelphia, in diſtreſs, and the tenor of the two depoſitions tends directly to contradict the aſſertion of the proteſt.

FROM all that appears in teſtimony, this veſſel was bound from New Orleans to the port of Nantz in France: and Matthié, the paſſenger, received a paſſport from the governor's ſecretary at New Orleans, to be admitted on board

as

as a paſſenger to Nantz. How then it could poſſibly happen, that this, or any other veſſel, being in the latitude of 25° 3′ north, ſhould be driven by a violent N. N. E. wind, to the latitude of 35° 4′ north, where the verbal proceſs was made on board, is to me quite incomprehenſible. But as I do not think the libellant's claim does at all depend upon the validity of either the verbal proceſs, or the ſubſequent proteſt, I ſhall obſerve no further upon them.

It is manifeſt to me, that the libellant hath been detained in the ſervice of this ſhip an unreaſonable length of time beyond the period of the voyage contracted for: that the original agreement made at Nantz, between the captain and his crew, has been violated and diſſolved by frequent unneceſſary deviations: that the promiſes of the captain, at every deviation, to return immediately to France, have been repeatedly broken: and that, if this cauſe was tried before a French court, under the marine ordinances of that country, there is no doubt but that the libellant would recover his wages, and obtain his diſcharge.

I ſee no reaſon for diſtinguiſhing this from Charles Moran's caſe: and therefore, I adjudge, that the libellant ſhall have his wages, at the rate

of 30 livres per month, from the 23d of October, 1786, to the 30th of June laſt; deducting 180 livres, which he acknowledges to have received: and that the reſpondent pay the coſts of ſuit.

July, 1788.

POEMS

ON

SEVERAL SUBJECTS.

TO THE

Rev. Mr. WILLIAM SMITH,

ON HEARING HIS SERMON UPON THE DEATH OF

Mr. WILLIAM THOMAS MARTIN.

I Call no aid, no muſes to inſpire,
Or teach my breaſt to feel a poet's fire:
Your ſoft expreſſions of a grief ſincere
Bring from my ſoul a ſympathiſing tear:
Taught by your voice, my artleſs numbers flow,
I ſigh in verſe, am elegant in woe,
And loftier thoughts within my boſom glow;
For when in all the charms of language dreſt
A manly grief flows genuine from the breaſt:
What generous nature can eſcape the wounds,
Or ſteel itſelf againſt the pow'r of melting ſounds?

Oh! could I boaſt to move with equal art
The human ſoul and melt the ſtony heart;

My long lov'd friend ſhould thro' my numbers ſhine,
Some virtue loſt be wept in ev'ry line:
For virtues he had many—'twas confeſt,
That native ſenſe and ſweetneſs fill'd his breaſt;
But cooler reaſon checks the bold intent,
And to the taſk refuſing her conſent,
This only truth permits me to diſcloſe,
That in your own you repreſent my woes,
And ſweeter than my ſong is your harmonious proſe.

September, 1754.

ODE ON MUSIC.

HARK! hark! the ſweet vibrating lyre
Sets my attentive ſoul on fire;
Thro' all my frame what pleaſures thrill
Whilſt the loud treble warbles ſhrill,
And the more ſlow and ſolemn baſs
Adds charm to charm and grace to grace.

Sometimes in ſweetly languid ſtrains
The guilty trembling ſtring complains:
How it delights my raviſhed ear
When the expiring notes I hear
Vaniſh diſtant and decay!—
They ſteal my yielding ſoul away.

Neatly trip the merry dance,
And lightly touch and ſwiftly glance;
Let boundleſs tranſport laugh aloud
Sounds madly ramble mix and crowd,
Till all in one loud rapture riſe,
Spread thro' the air and reach the ſkies.

But when you touch the ſolemn air,
Oh! ſwell each note diſtinct and clear;
In ev'ry ſtrain let ſorrow ſigh,
Languiſh ſoft and ſweetly die.

So

So ſhall th' admir'd celeſtial art,
Raiſe and tranſport my raviſh'd heart;
Exalt my ſoul, and give my mind
Ideas of ſublimer kind.
So great the bliſs it ſeems to prove
There muſt be muſic too above,
That from the trumpets ſilver ſound
Of wing'd arch-angels plac'd around
Thy burning throne—Oh! king of Heaven!
Moſt perfect harmony is giv'n:
Whilſt happy ſaints in concert join
To make the muſic more divine,
And with immortal voices ſing
HOSANNAHS to their glorious KING.

SONG.

SONG.

BEAUTY and merit now are join'd,
An angel's form, an angel's mind
Are ſweetly met in *thee*.
Thy ſoul, which all the virtues grace,
Shines forth with luſtre in thy face,
From affectation free.

II.

Who in thy form, too lovely maid!
Can read thy temper there diſplay'd;
Can look and calmly ſee?
The face that with ſuch beauty charms,
The breaſt which ſo much virtue warms,
Is ſure too much for me!

To Miss ———,

On her kind assistance in the vocal parts of an ORATORICAL EXERCISE, performed at the college of Philadelphia.

I.

THE pleaſing taſk be mine, ſweet maid!
To ſpread thy growing fame;
For early virtues ſuch as thine
An early honour claim.

II.

'Twas nobly done, to lend thy voice
And ſoft harmonious ſong,
When *Freedom* * was the rapturous theme
That warbled from thy tongue.

III.

Yet lovely fair! thy voice, tho' ſweet,
We ſhould not moſt admire;
Good-nature, and the kind intent,
A nobler praiſe require.

IV.

* Alluding to a ſong which ſhe ſung in praiſe of Freedom.

IV.

Let not the merit all be plac'd
In thy harmonious ſkill;
'Tis not the deed obliges moſt,
The virtue's in the will.

V.

Thus ſtill proceed, above all pride;
Such themes be ever thine:
So to the *good* ſhalt thou be dear,
And favour'd by the *Nine*.

TO

TO THE MEMORY OF

MR. WILLIAM WILLCOCKS,

A BELOVED FRIEND.

DRAW near ye youths, in whom ſoft ſorrows dwell,
Whoſe ſtreaming eyes your heartfelt anguiſh tell:
Come ſeek with me the tomb where *Pollio* lies,
Tears aiding tears, and ſighs encreaſing ſighs!
How great the grief! when genius fall a prey
In early bloom to death's unyielding ſway?
When all the proſpects of a father's joy,
A mother's fondeſt wiſhes for her boy,
One cruel ſtroke muſt blaſt, one cruel ſtroke deſtroy.
Let not th' unſkilful muſe attempt to tell
Thy many virtues, though ſhe knew them well;
She knew thy ſoul adorn'd with ev'ry grace,
And ſure that ſoul was pictur'd in thy face.

The youths, thy fellows, ſhall delight to tread
The noble footſteps thy example led;
To make thoſe virtues in their conduct ſhine,
Which once, dear youth, we all acknowledg'd thine.
How few excel! they'll place thee mid that few,
Lament your loſs, and ſtrive to be like you.

Oh! may your fate this warning give to all,
"That old age *muſt*, and blooming youth *may* fall."

HERMI-

HERMITAGE, A POEM,

INSCRIBED TO

MR. JACOB DUCHÉ, JUN.

I.

WHILST other bards in happier lays
The fair Amanda ſing,
Teach the ſweet lyre her grateful praiſe
To waft from ev'ry ſtring:

II.

Whilſt you the ſofter theme prolong
Of Seraphina's voice,
And in deſcription make your ſong
Harmonious as your choice:

III.

My muſe delights in humble ſtrains
To ſing of ſylvan ſcenes,
Of rural proſpects, flow'ry plains,
And wide extended greens.

IV.

IV.

Sweet Hermitage * ! thy happy ſeat,
The muſe's choice and mine;
Thy ſhady ſilent ſoft retreat
Shall in deſcription ſhine.

V.

That ſecret walk of livelieſt green,
That breeze inviting ſhade,
Appears a ſolemn ſilent ſcene
For contemplation made.

VI.

There will I range, and to the muſe
Addreſs my ardent pray'r;
In ſuch a place ſhe can't refuſe,
Nor would be backward there.

VII.

Oft did this happy grove reſound
Strains ſweeter far than mine;
Here ſat the Bard †, and here around
Stood the indulgent Nine.

VIII.

Poetic muſic from his tongue
Harmonious roll'd away;
The birds in dumb attention hung
To hear his ſofter lay.

IX.

* The ſeat of the hon. Joſiah Martin, eſq. upon Long-Iſland.
† *The* rev. Mr. Smith, who reſided there ſeveral years.

IX.

And thou my friend, in later days,
Fill'd this reſounding grove
With ſongs of matchleſs Delia's praiſe,
Soft as the breath of love.

X.

Dear penſive youth, oft have you ſought
At eve, this pleaſing ſhade;
Your very ſoul wrapt up in thought,
As lonely here you ſtray'd.

XI.

Or ſhall my fancy—reſtleſs power!
Another ſcene diſplay,
And paint thee in yon jaſmine bow'r,
Joyful, alert, and gay.

XII.

With Delia's ſprightly converſe bleſt
The hours unheeded glide,
And Pyllades, friend of thy breaſt,
Attending at thy ſide.

XIII.

With joy I tread the flow'ry green
Which thou haſt trode before;
Strive to repeat each happy ſcene,
And count thy pleaſures o'er.

XIV.

Where'er my wond'ring eyes I bend,
New beauties ſtill I find;
Here cooling viſtas far extend,
The gardens bloom behind.

XV.

To diſtant plains I ſtretch mine eye,
And view th' enlarged ſcene;
Above a vaſt extended ſky,
Below a boundleſs green *.

XVI.

Thence, ſwiftly borne in airy flight,
The breezes of the ſpring,
To theſe bleſt ſcenes of calm delight
Both health and pleaſure bring.

XVII.

At early morn I love to tread
The garden's gravelly walk,
Catch Flora bluſhing in her bed,
Whilſt dew drops bend each ſtalk.

XVIII.

To ſee the lovely blooming roſe
Her choiceſt ſweets diſplay,
And ev'ry radiant charm diſcloſe
To ſol's inviting ray.

XIX.

* The great plains on Long-Iſland.

XIX.

Her waving foliage glitt'ring bright,
With drops of pearly dew:
Like diamonds ſparkling to the light,
They ſtrike the diſtant view.

XX.

The faithful matron thus to meet
Her abſent lord's return,
Her hair, her neck, her waiſt, her feet,
Doth with rich gems adorn.

XXI.

And as ſhe lonely ſpends each day
His abſence to bemoan,
The minutes gliding ſlow away,
Whilſt he her lord is gone.

XXII.

So in the dreary ſhades of night,
The roſe her beauty veils,
Till with returning joy and light,
The ſun o'er all prevails.

XXIII.

But when the ſoft ey'd eve invites
My ſteps from yonder glade,
Then, then, my ſoften'd ſoul delights
To ſeek the darkſome ſhade.

XXIV.

XXIV.

Devotion fills my glowing breaſt,
And all my powers combine
To praiſe my God, to make me bleſt,
In tranſports quite divine.

XXV.

Behold to raiſe the ſolemn ſcene
The ſilver moon ariſe;
With mildeſt luſtre gild the green,
With radiance fill the ſkies.

XXVI.

Her feeble inoffenſive ray
Scarce glimmers thro' the trees,
Whoſe leaves with trembling murmurs play,
Shook by the paſſing breeze.

XXVII.

'Tis ſilence all—my ſoul ariſe,
Ariſe to prayer and praiſe;
Thy God looks down with friendly eyes,
He liſtens to thy lays.

XXVIII.

Oh thou, whoſe goodneſs knows no end,
Whoſe mercies I enjoy,
In praiſe to thee my breath I'll ſpend,
My lateſt hours employ.

XXIX.

XXIX.

Let me oft thus thy influence know,
  Oh! be thus ever kind;
The brightneſs of thy viſage ſhow;
  Enlighten thou my mind.

XXX.

So ſhall my ſoul to heav'n aſcend,
  And join'd with angels there,
Before thy footſtool lowly bend,
  In more refined pray'r.

ADVICE TO AMANDA.

I.

AMANDA, ſince thy lovely frame,
Of ev'ry charm poſſeſt,
Hath power to raiſe the pureſt flame
And warm the coldeſt breaſt:

II.

Oh! think that heav'n could ne'er deſign,
Thou too reſerved maid,
That ever beauties, ſuch as thine,
Like unknown flow'rs ſhould fade.

III.

When next you ſee your faithful ſwain,
Your *Strephon* at your feet;
When next you hear him ſigh his pain
And tend'reſt vows repeat.

IV.

Then think 'tis fit a love ſo true
Should meet a kind regard;
And think 'tis given alone to you
His virtue to reward.

If

V.

If conſtancy, with merit join'd,
Hath any charms for thee,
Let *Strephon* thy acceptance find,
For ſuch a ſwain is he.

VI.

No longer then, too cruel fair,
Defer the happy day;
But with thy love reward his care,
His tenderneſs repay.

VII.

So ſhall th' indulgent eye of Heav'n
The worthy choice approve,
When ſuch victorious charms are giv'n
A prize to faithful love.

AN EPIGRAM.

ON THE

DEATH OF A FAVOURITE LAP DOG.

CHLOE the muſe records thy name,
And thou, tho' dead, ſhalt live in fame;
Yet know this honour, not to you,
But is to *Mira's* favourite due.

L'ALLEGRO.

:E melancholy, care and ſorrow,
t defers you till to-morrow;
o room within my breaſt
dull, cold, lifeleſs gueſt—
er come, life raiſing *joy*,
:ſs of a laughing boy.
ıples crown'd with op'ning flow'rs,
produce of vernal ſhow'rs;
thy ſhoulders let there be
e mantle light and free;
ll thy graceful body bind,
t ſhall looſely flow behind;
ee let ſoft breezes bring
: odours of the ſpring.

:, friſky, wanton, gay,
ınd round thee let them play;
ſ garment high in air;
hy looſe luxuriant hair,
t the flow'rs that crown thy head
ng ſweets around to ſpread.

As thou thus approach'ſt me nigher
Let me hear the warbling lyre;
Graceful uſe the ſpringy quill,
Touch it with ſuperior ſkill;
But not to ſuch ſoft languid airs,
Soothing ſorrows, ſoothing cares,
With which the ſilly ſinging ſwain
Proclaims imaginary pain.
But ſtrike me up ſounds briſk and gay,
Sounds that may ſteal my ſoul away;
Make a ſoft glow of gladneſs riſe,
And ſhow thee ſparkling in mine eyes.

Thus attend me whilſt I ſtray;
Wild as fancy leads the way,
Over valley, hill, and plain
To the ocean's wild domain:
O'er the wild ſeas far extending
Let me ſee the world's arch bending,
And behold with wond'ring eye
The rounded globe, the meeting ſky;
Where the white clouds ſwimming low
Drink the waters as they go;
Where the ſun ſoft dews and rain
Exhales to ſhed on earth again;
Whence ſkim the duſky ſhades away
Before the ſplendid ſource of day;
Or where the ſilver queen of night,
Firſt tips the trembling deep with light.

Or let me ſtray through the waving groves
Where the turtle cooes her loves.

Where

Where the linnet's warbling lay
Still attends my flow'ry way ;
And the lark's melodious ſong
Charms me as I go along :
Or let me pauſe and view the ſcene,
The blooming vales, the hillocks green ;
The ſtream, that winding in meanders,
Thro' the tufted meadow wanders ;
The fields where flocks in ſafety ſtray,
And harmleſs lambkins ſport and play.

Behold far off, with roaming eye,
Between two oaks a cot I ſpy,
Where *Darby* ſits beſide the door,
Nor envies kings their royal ſtore :
Whilſt *Joan*, a matron ſtaid and ſage,
Remains the comfort of his age ;
And *Phillis* near, with voice ſo ſweet,
Phillis their hand-maid, ſpruce and neat,
Cheers their old hearts with merry ſong,
And ſpins and ſings the whole day long.

And here beneath a friendly ſhade
The am'rous ſwain is careleſs laid :
On oaten pipe he loves to play
And wear the tedious hours away ;
Till Dolly leaves her flock behind
Her faithful *Thyrſis* here to find :
And there behold with anxious look
The wiley ſhepherd baits his hook :
The ſportive fiſh, that nimbly glide
And cut with ſilver fins the tide,

Caught

Caught by his art, now helpleſs lie,
And flutter, pant, and gaſp and die.

Thus let me paſs the ſummer days
In blithſome ſcenes and jocund eaſe:
But when bleak winter comes amain,
With all his ſullen vap'ry train,
Abroad his ſnowy mantle ſpreads,
And rattles hail ſtones o'er our heads;
Then, when the groves delight no more
Nor ſongſters warble as before,
But ev'ry verdant ſhelter's loſt,
Nipt by the blaſting wind and froſt;
Soon as the ſtream thro' flow'ry ways
No more in pleaſing murmurs ſtrays,
But firmly bound to either ſide
In icy chains, forgets to glide;
Quick let me ſhun the horrid ſight,
And to the city take my flight;
Where mirth knows one continual round
And pleaſures ever gay abound:
Attend me, *joy*, attend me there,
And let thy preſence baniſh care.
Oh! lead me where the chearful fire
Doth burn, and jeſt and wit inſpire;
Whilſt the ſlow revolving night
Leaves ample room for long delight.
Meanwhile let *Bacchus*, jolly boy!
Be found thy bon-companion, joy:
Let num'rous friends ſurround the hearth,
Devoted all to glee and mirth;

Where

Where never ſorrow dare apppear,
Or thought intenſe, or gloomy care;
But all airy light and free—
Glad vot'ries all to *jollity*:
Whilſt wit doth ſtill with laughter join,
And open hearts are caus'd by wine.

Or whilſt the rigid winter yields,
Proſpects of ice and ſnowy fields,
Soon as the haſty ſhort-liv'd day
In the red weſt withdraws her ray,
And glitt'ring ſtars with feeble light,
Bedeck the ſable garb of night.

Quick to the ball-room, joy, repair,
For thou wilt hardly miſs me there;
Where the promiſcuous ſparkling throng
The gayly jocund ſcene prolong:
Where art with native beauty joins,
And each victorious fair one ſhines
In all the pomp, in all the ſhow,
That dreſs can give and mirth beſtow.
Here in full glory may be ſeen
Zaphyria riv'ling beauty's queen;
Around her preſs the leſs'ning throng
To hear the muſic of her tongue:
And whilſt in Celia's robes we find
A noble air, a taſte refin'd;
More pow'rful charms her features wear,
For Cupid keeps his revels there:

Soft

Soft bluſhes in her cheeks ariſe,
And love looks languid in her eyes.

Meanwhile gay wit the time beguiles,
With humours quaint and ſimp'ring ſmiles.
Dick flaunts it in his tinſel'd coat,
And *Ned* ſpeaks tender lines by rote;
Chloe with bluſhes ſeems to hear
Her love-ſick *Damon* ſighing near;
Whilſt *Mira* both their thoughts deſcries,
And reads ſoft ſouls in tell-tale eyes.

But hark! the muſic's ſudden ſound
Spreads univerſal gladneſs round;
Joy lightens quick in ev'ry face,
An inſtant buz fills all the place:
And now prepared on either hand,
The beaux and belles in order ſtand:
And now they trip the merry dance,
And to quick movements ſmoothly glance.
Each fair her partner leads aſtray,
Thro' a long labyrinthian way;
Each ſwain his flying fair purſues,
Who ſtill the pleaſing toil renews.

Me the ſhrill ſoaring ſounds inſpire,
With tranſports that can riſe no higher;
My body ſkims along the floor,
I feel my willing feet no more:
The muſic lends me wings; and I
In waving motions ſeem to fly:

And beaux and belles and tapers bright,
Swim undiſtinguiſh'd in my ſight.

If ſuch thy pleaſures, ſmiling joy,
Oh! may'ſt thou e'er my mind employ;
Dawn in my breaſt perpetual day,
And chaſe intruding care away.

IL PENSEROSO.

VANISH mirth, and vaniſh joy,
Airy pleaſures quickly cloy;
Hence all ye bacchanalian rout,
And wine, and jeſt, and noiſy ſhout;
And quips, and cranks, and gay grimace,
And wit, that wears a double face.
Hence ev'ry kind of jollity,
For you have no delights for me.
But welcome, welcome, melancholy,
Thou goddeſs ſage, demure, and holy!
Exalt thy ever muſing head,
And quit, oh! quit, thy ſleepleſs bed!
With languid looks, and anxious eyes,
Divineſt melancholy riſe!

And thou, oh Smith! my more than friend,
To whom theſe artleſs lines I ſend:
Once more thy wonted candour bring,
And hear the muſe thou * taught'ſt to ſing:
The muſe that ſtrives to win thy ear,
By themes thy ſoul delights to hear:
And loves, like thee, in ſober mood,
To meditate on *juſt* and *good*:

Whilſt

* He was the author's preceptor.

Whilſt melancholy ſooths to reſt
Each tumult riſing in the breaſt.

Exalted themes! divineſt maid!
Sweet melancholy, raiſe thy head!
With languid look, oh! quickly come,
And lead me to thy hermit home:
There let thy ſorrow ſoothing reign,
Detain me long in penſive ſtrain;
Exalt my thoughts, poſſeſs my ſoul,
Enlarge my views, and ſeize me whole.
Oh! give me thy delights to know,
The heart that bleeds for human woe:
The virtuous throb, the grief-ſwoln eye,
The falling tear, and deep-drawn ſigh.

Exalted themes! divineſt maid!
Sweet melancholy, raiſe thy head!
With languid look, oh! quickly come:
And lead me to thy hermit home.
Or be thou with me whilſt I rove
Thro' yonder dark untrodden grove,
Where the moon is rarely ſeen
Glimm'ring thro' the duſky green;
Whilſt an awful ſilence reigns
O'er valleys, hills, and diſtant plains:
Nothing but the night-bird's cry,
Echoing thro' the vaulted ſky;
Nothing but the ceaſeleſs rill
Murm'ring o'er its pebbles ſtill:
Or the diſtant falling flood

Shakes the ſilence of the wood.
There I'll wander till there's found,
Stretch'd upon the leafy ground,
An oak, which many a ſummer's day
Hath crumbled in a ſlow decay;
There down upon its moſſy bed
In liſtleſs length I'll lean my head;
While the ſmall worm that gnaws its heart,
Shall muſic to my ſoul impart.

Or let me in ſome crazy boat,
Along the wat'ry ſurface float;
Leaning penſive o'er its ſide,
Let me view the rippling tide;
Whilſt Cynthia's cold declining rays,
Who now but half her orb diſplays,
On the clear boſom of the deep,
In mild compoſure ſeems to ſleep.

But hark! what voice ſo loud and ſhrill
From yonder dark romantic hill,
Strikes ſudden on my ſtartled ear,
And warbles forth in ditties clear?
'Tis her's *—that bird well known to fame,
The fond repeater of her name—
Proceed, ſweet bird, I love thy ſtrain,
Encreaſing ſtill the ſolemn ſcene:
I'll ſit attentive to thy note,
Till Cynthia's lateſt rays go out.

Then

* A night-bird, vulgarly called the Whipper-will.

Then on the margin of a ſtream,
I'll lay me ſilent, think, and dream;
Where no pale glimpſe of borrow'd light
Breaks through the drowſy noon of night:
And ſtars in vain with feeble ray,
Attempt to give a doubtful day:
While clouds far off low low'ring riſe,
Poſſeſſing firſt the nether ſkies;
Thence lazy lab'ring to the poll,
Up the ſteep arch their vengeance roll,
Black as the purpoſe of a guilty ſoul.

Here retir'd from noiſe and folly,
Sober viſag'd Melancholy!
On a ruſtling ruſhy bed,
With thee I'll lean the languid head;
And in the dimpled tide deſcry
The gath'ring horrors of the ſky;
See the ſtars dancing as they go,
And view the other heav'n below:
Whilſt from behind the bull-ruſh near,
The frog's hoarſe-cadenc'd voice I hear;
Whoſe oft repeated hollow ſound,
A pleaſing ſadneſs ſpreads around.
But hark! rude ruſtling thro' the trees,
A ſudden unexpected breeze,
Swift burſting from the darkſome wood,
Shakes the ſmooth ſurface of the flood;
Then ſlow I raiſe my downcaſt eye,
To gaze the drear preſageful ſky,

Where

Where clouds high heap'd, and ſwimming low,
Hang heavy on night's awful brow.
Around a gloomy ſilence reigns,
Huſh'd is each throat thro' hills and plains:
The ſtars but now that ſhone ſo bright,
Slide ſwift and vaniſh out of ſight.
The rapid ſtorm comes on apace,
The heav'ns wear one diſtracted face;
And ruder blaſts unbounded rove
In ſullen murmurs thro' the grove—
Down yonder dreadful depth of ſky,
In ragged ſheets the light'nings fly;
Peals following peals hiſs through the air,
And burſt in awful ruin near:
Deſcending quick the heavy floods
Dance on the ſtream, and rattle in the woods.

Whilſt thus the elements engage,
And with encreaſing fury rage;
Oh! let me find ſome ſtony ſhed,
Where I may ſafely lodge my head,
T' enjoy the horrors of the ſtorm,
And to its God due rites perform.
Beneath yon rock, whoſe moſſy ſide
With fearful bend o'erhangs the tide,
Groteſque and wild, a cave I ſpy,
And to its ſhelter quickly fly.
But as I climb the graſs-grown ſteep,
Whoſe darkſome height juts o'er the deep;
Sent from aloft, with ſtartled ear,
A ſudden voice of woe I hear—

" RAGE on thou tempeſt of the ſky,
" Your fierceſt vengeance I defy:
" A ruder ſtorm whirls in my breaſt,
" And death alone can give me reſt;
" My ſorrows in this ſtream ſhall ſleep,
" And I"—then plunges in the deep.
Nature a-while yet fond of life
Maintains with death an equal ſtrife;
The lover ſtrives to gain the ſhore,
But ſinks, alas! to riſe no more.

Save me, ye powers, from ſcenes ſo ſad,
Scenes not of melancholy bred;
But ſprung from furious wild deſpair,
In Stygian cell begot of care.

But might I hear true love complain,
In a more mild and temp'rate ſtrain;
Then let my frequent feet be ſeen
On yonder ſteep romantic green;
Along whoſe yellow gravelly ſide,
Schuylkill ſweeps his lucid tide:
Where waters fall with conſtant roar,
Re-bellowing down the rocky ſhore.
* Where nightly at the turf-clad grave,
In concert with the bird of eve;
Beneath the glimpſes of the moon,
The hermit mourns *Amelia* gone:

* Alluding to the affecting ſtory of *Theodore* and *Amelia*, in the firſt number of the *Hermit*.—Vide Amer. Mag. for October, 1757.

Till reaſon lifts his eye to heav'n,
And mild ſubmitting thoughts are given.

Thus, melancholy, ſhalt thou pleaſe,
If thou wilt find me ſcenes like theſe:
Thus may'ſt thou e'er my mind employ,
And baniſh ev'ry lighter joy.

But when the ſummer ſcenes are loſt,
Welcome winter! welcome froſt!
Then I'll ſpend the long, long night,
By the lamp's pale and glimm'ring light:
Creeping nigher ſtill and nigher
To the half extinguiſh'd fire,
Where midſt the glowing coals I view
Lambent flames of livid blue:
Or liſten to the crackling tread
Of heavy foot on ſnowy bed:
While howling blaſts around me rage,
And wind, and ſnow, and hail, engage;
And through a crevice in the wall,
Boreas whiſtles ſhrill and ſmall;
And the doors, by time grown weak,
On their iron hinges creak:
There I'll muſe on ſtories old,
By a toothleſs matron told;
Of a tall, wan, and ſlender ſp'rit,
Stalking in the dead of night;
Whoſe long trailing winding ſheet
Flows luxuriant round his feet:
Gaping wounds all o'er him bleed,
To diſcloſe ſome horrid deed:

With

With beck'ning hands he ſeems to ſay,
"Haſte to my grave, come, come away!"

Thus ſhould my fancy ever find
Some dreary ſcene to fill my mind;
And thus I'd ſit with fixed eye,
To ſee the crumbling embers die,
Fearing to turn to either ſide,
Leſt there the horned ſpectres glide:
Till morn, ſlow peeping from on high,
Should twinkle with unwelcome eye;
Then would I ſhun th' intruding ray,
And hide me from the gariſh day;
Darkling to bed would ſilent creep,
Huſh'd by the howling winds to ſleep.

A MORNING HYMN.

I.

ARISE! and ſee the glorious ſun
Mount in the eaſtern ſky:
See with what majeſty he comes,
What ſplendor ſtriks the eye!

II.

Life, light, and heat he ſpreads abroad
In ever bounteous ſtreams;
This day ſhall joyful myriads own
The influence of his beams.

III.

How freſh the healthful morning air!
What fragrance breaths around!
New luſtre paints each op'ning flow'r
New verdure cloaths the ground.

III.

No ruffling ſtorms of wind or rain
Diſturb the calm ſerene:

But gentle nature far abroad
Diſplays her ſofteſt ſcene.

V.

Thro' chequer'd groves and o'er the plains
Refreſhing breezes paſs,
And play with ev'ry wanton leaf,
And wave the ſlender graſs.

VI.

See yonder ſilver gliding ſtream;
The ſun's reflected ray,
Doth in its wat'ry boſom ſport,
And on its ſurface play.

VII.

The trees that ſhade its flow'ry banks,
Are nouriſh'd by the flood;
Whilſt from their branches ſongſters ſweet,
Re-echo thro' the wood.

VIII.

They with their little warbling throats,
Salute the riſing day;
And in untaught, but pleaſing ſtrains
Their grateful homage pay.

IX.

Oh! let us then with ſouls ſincere
Adore that pow'r Divine!
Who makes that orb move thus complete,
Who makes his rays to ſhine.

Who

X.

Who cauſes ev'ry riſing day
In beauty to return;
And bids the ſun's meridian height
With brighter glories burn.

XI.

Who morning, noon, and evening too,
Has with his bleſſing bleſt;
And kindly gives the night's ſtill ſhades
For wearied man to reſt.

AN ELEGY.

ON THE DEATH OF

Mrs. JANE WILCOCKS.

FROM the bright glories of celeſtial day,
Where hoſts angelic, rang'd in vaſt array,
Salute thy ſoul, and with ſeraphic breath
Calm the rude horrors of the recent death;
Bleſt ſhade look down, my mournful accents hear,
Oh! ſee me ſhed the the tender parting tear!
Too ſoon, alas! the beſt of friends I mourn;
To ſoon with cypreſs deck thy ſilent urn;
Too ſoon my muſe employs her ſofteſt lays,
To paint my grief, and to attempt thy praiſe.
Oh! warm my boſom whilſt thy worth I ſing;
Oh! teach my hand to touch the plaintive ſtring.
Mournful the ſubject, mournful be my ſong,
And let ſoft ſorrows each ſad line prolong;
All joy, all comfort, from my ſoul is fled,
Since thou art number'd with the ſleeping dead.
By moon light oft I lonely ſeek the plain,
Sooth my diſtreſs, and fondly nurſe my pain;

There

There muſe on ſcenes I've paſt with thee before,
And weep to think thoſe ſcenes can be no more.
How oft in pleas'd attention have I hung,
While wiſdom roll'd harmonious from thy tongue!
In precepts form'd to guide my heedleſs youth,
Thro' the bright paths of ever radiant truth.
Such were the virtues that adorn'd thy breaſt,
To know thee well, was to eſteem thee beſt:
Heav'n to the ſweetneſs of thy ſex had join'd,
An active ſpirit, a heroic mind;
A woman ſoft, as far as ſoftneſs can,
In noble reſolution more than man.
Religion pure thy ſpotleſs boſom fir'd,
And all thy actions, all thy thoughts inſpired:
And yet thy ſoul would ever turn aſide
With juſt diſdain from oſtentatious pride;
Whatever fortune Heav'n deſign'd, 'twas thine,
A bright example in that ſphere to ſhine.
'Twas thine to grace each varying ſtate of life,
The tend'reſt mother, and the fondeſt wife;
Faithful in friendſhip, true to ev'ry truſt,
And to thy God, thyſelf, and neighbour juſt;
As far, at leaſt, as mortal powers can go,
For ſtrict perfection dwells not here below.
Long hadſt thou liv'd to bleſs thy weeping friends,
Long hadſt thou liv'd for many a glorious end.
If * *Pollio's* ghoſt had not forbid thy ſtay;
His beck'ng ghoſt invited thee away.
Pollio the wife, the generous, and the young,
Whoſe early fate the ſorrowing muſe hath ſung.

Wha

* Her ſon, Mr. William Wilcock's was the occaſion of hers.

What tho' thy body moulders into duſt,
Thy ſpirit joins him mid th' encircling juſt.
E'en now I ſee thee in thoſe heav'nly plains,
Where perfect bliſs, and peace eternal reigns;
Where pain and ſorrow can no more annoy,
But thy ſoul drinks of never ending joy:
Where all the bitterneſs of grief is o'er,
And death's cold pangs ſhall agonize no more:
There ſhalt thou liſten to the heav'nly ſound
Of cherubim and ſeraph chaunting round;
In ſongs celeſtial thou ſhalt there adore,
Him that ſhall laſt when time ſhall be no more.

VERSES

VERSES

Inſcribed to the officers of the 35th regiment on their embarkation for the expedition againſt Louiſbourg.

NOW warmer ſuns, once more bid nature ſmile,
The new-born ſpring peeps from the teaming ſoil:
From ice the ſtreams, the fields from ſnow are free,
And bloſſoms ſwell on every pregnant tree:
The ſoftened ſeaſon melts in ſudden ſhow'rs,
And *April* all her flow'ry treaſures pours;
Well might I ſing the early warbling lay
Of rural ſongſters at the dawn of day;
The riv'let winding thro' the long drawn vale,
The new cloth'd mountain, the green tufted dale;
Or ſhepherd's pipe, that in melodious ſtrains,
Welcomes the ſpring to valleys, hills and plains.
But theſe I leave, and for the aſpiring muſe,
A nobler theme, a loftier ſubject chooſe.
This is the ſeaſon whoſe warm rays inſpire,
Heroic boſoms with a martial fire:
To war's alarms all ſofter pleaſures yield,
And ev'ry Briton burns to take the field.

The

The drums loud beat, the fife's ſhrill ſoaring lay,
The trumpet's clangor, the dread cannon's play;
All, all conſpire to bid the heroes go
And thunder vengeance on the daring foe.
Ye who have roll'd the winter months away,
In ſcenes of pleaſure and in paſtimes gay;
At home endow'd with ev'ry art to pleaſe,
Of free politeneſs and becoming eaſe;
Abroad, the noble champions of our cauſe,
Protectors of our liberties and laws.

Long have you known the gently thrilling fires
Which beauty kindles and which love inſpires;
Long have enjoy'd the graces of the fair,
To pleaſe and to be pleas'd was all your care:
Far other tranſports now your boſoms warm,
Far other glories your ambition charm.—
Go, ſeek for conqueſt where loud tumults reign,
Where death runs liquid o'er the impurpled plain;
Where victor's ſhouts, and vanquiſh'd warriors cries
In clouds of ſmoke promiſcuouſly ariſe,
And undiſtinguiſh'd reach the vaulted ſkies;
Where deſolation ſtalks the tragic field,
Where Britons conquer, and where Frenchmen yield.

See on the ſurface of that rolling tide
Faſt moor'd the proud expecting navies ride:
They looſe their ſtreamers from each top maſt height,
And ſpread their wings, impatient for the fight;
Eager thro' ſeas, to waft you hence away,
Where laurels ſtrew the field, and honours crown the day.

Oh!

Oh! may indulgent heav'n aſſiſtance to lend!
Oh! may ſucceſs Britannia's arms attend:
Let ev'ry ſword a keen deſtruction wear;
Each well aim'd ſpear a pointed vengeance bear;
And may each heroe, that we ſend from home,
Back to our wiſhing arms a glorious conqueror come.

SONG

SONG.

I.

HEAR, heav'nly goddeſs, queen of love!
A heart that owns thy fire;
Let my diſtreſs thy pity move,
And grant my fond deſire.

II.

Far abſent from my ſoul's delight,
I languiſh and complain:
In tender accents day and night,
I ſooth my ſecret pain.

III.

Penſive, I ſeek the lonely bow'r,
Where to my cheated view,
Falſe fancy, by her magic pow'r,
Doth former ſcenes renew.

IV.

And *Strephon's* look, and *Strephon's* ſmile,
Pleaſe my deluded eye;
His fancied preſence, for a while,
Affords a ſhort-liv'd joy.

V.

Since then no longer, as before,
His converſe I enjoy;
Thus let my *Strephon* ever more
My faithful mind employ.

VI.

Whene'er ſoft ſleep ſhall over me
Its happy influence ſhed,
Oh! let his airy image be
Still hov'ring round my bed!

VII.

With ev'ry native charm and grace
Adorn the lovely youth;
And in the ſweetneſs of his face,
Paint conſtancy and truth.

ON THE LATE SUCCESSFUL EXPEDITION AGAINST LOUISBOURG.

AT length 'tis done, the glorious conflict's done,
And Britiſh valour hath the conqueſt won:
Succeſs our arms, our heroes, honour crowns,
And Louiſbourg an Engliſh monarch owns!
Swift, to the ſcene where late the valiant fought,
Waft me, ye muſes, on the wings of thought—
That awful ſcene, where the dread god of war
O'er fields of death roll'd his triumphant car:
There yet, with fancy's eye, methinks I view
The preſſing throng, the fierce aſſault renew:
With dauntleſs front advance, and boldly brave
The cannon's thunder, and th' expecting grave.

On yonder cliff, high hanging o'er the deep,
Where trembling joy climbs the darkſome ſteep;
Britannia lonely ſitting, from afar
Waits the event, and overlooks the war;
Thence, roll her eager wand'ring eyes about,
In all the dread anxiety of doubt;
Sees her fierce ſons, her foes with vengeance ſmite,
Graſp deathleſs honours, and maintain the fight.
Whilſt thus her breaſt alternate paſſions ſway,
And hope and fear wear the ſlow hours away.

See\

See ! from the realms of everlaſting light,
A radiant form wings her aerial flight.
The palm ſhe carries, and the crown ſhe wears,
Plainly denote 'tis *Victory* appears:
Her crimſon veſtment looſely flows behind,
The clouds her chariot, and her wings the wind:
Trumpets ſhrill ſounding all around her play,
And laurell'd honours gild her azure way—
Now ſhe alights—the trumpets ceaſe to ſound,
Her preſence ſpreads expecting ſilence round:—
And thus ſhe ſpeaks; whilſt from her heav'nly face
Effulgent glories brighten all the place—

" Britannia, hail! thine is at length the day,
" And laſting triumphs ſhall thy cares repay;
" Thy godlike ſons, by *this*, their names ſhall raiſe,
" And tongues remote ſhall joy to ſwell their praiſe.
" I to the liſt'ning world will ſoon proclaim
" Of *Wolfe*'s brave deeds, the never-dying fame,
" And ſwell with glory *Amherſt*'s patriot name.
" Such are the heroes that ſhall ever bring
" Wealth to their country, honour to their king:
" Oppoſing foes, in vain attempt to quell
" The native fires that in ſuch boſoms dwell.
" To thee, with joy, this laurel I reſign,
" Smile, ſmile, *Britannia!* victory is thine.
" Long may it flouriſh on thy ſacred brow!
" Long may thy foes a forc'd ſubjection know!
" See, ſee their pow'r, their boaſted pow'r decline!
" Rejoice *Britannia!* victory is thine."

Give your looſe canvas to the breezes free,
Ye floating thund'rers, bulwarks of the ſea:
Go, bear the joyful tidings to your king,
And, in the voice of war, declare 'tis victory you bring:
Let the wild croud that catch the breath of fame,
In mad huzzas their ruder joy proclaim:
Let their loud thanks to heav'n in flames aſcend,
While mingling ſhouts the azure concave rend.
But let the few, whom reaſon makes more wiſe,
With glowing gratitude uplift their eyes:
Oh! let their breaſts dilate with ſober joy.
Let pious praiſe their hearts and tongues employ;
To bleſs our *God* with me let all unite,
He guides the conq'ring ſword, *he* governs in the fight.

* The Engliſh forces landed at Louiſbourg, June 8, 1758, and entered the city in triumph on the 27th of July following.

A PROLOGUE

SPOKEN BY MR. LEWIS HALLAM, AT THE OPEN-ING OF A THEATRE AT PHILADELPHIA.

TO bid reviving virtue raiſe her head,
And far abroad her heav'nly influence ſhed;
The ſoul by bright examples to inſpire,
And kindle in each breaſt celeſtial fire:
For injur'd innocence to waken fear;
For ſuff'ring virtue ſwell the gen'rous tear;
Vice to expoſe in each aſſum'd diſguiſe,
And bid the miſt to vaniſh from your eyes,
With keener paſſion, that you may deteſt
Her helliſh form, howe'er like virtue dreſt:
The muſe to cheriſh, genius to inſpire,
Bid fancy ſtretch the wing, and wit take fire—
For theſe we come—for theſe erect our ſtage,
And ſhew the manners of each clime and age:
For theſe we come—oh! may your ſmiles attend
The pleaſing taſk, and all our toils befriend.
—Away ye ſenſeleſs, ye whom nought can move,
Vice to abhor, or virtue to approve;
Whoſe ſouls could ne'er enjoy the thought ſublime,
Whoſe ears ne'er taſte the muſe's flowing rhime.

But ye whoſe breaſts the pow'rs of ſoftneſs know,
Who long have learnt to feel another's woe;

Nor

Nor bluſh to heave the ſympathetic ſigh,
Or drop the pious tear from pity's eye;
Attend our work, and may you ever find
Something to pleaſe and to improve the mind:
That as each diff'rent flow'r that decks the field
Does to the bee mellifluous ſweetneſs yield:
So may each ſcene ſome uſeful moral ſhow;
From each performance ſweet inſtruction flow.
Such is our aim—your kind aſſent we aſk,
That once obtain'd, we glory in the taſk.

EPILOGUE for TAMERLANE,

SPOKEN BY MRS. *DOUGLAS.*

ONCE more, as cuſtom hath ordain'd, I come
To ſpeak the epilogue, and learn our doom:
Oh! may you be to our endeavours kind,
And let us hope your glad applauſe to find!

The moral of our play I need not tell,
You who obſerv'd it ſure muſt know it well.
In all her glory virtue ſtood confeſt,
With juſt rewards and happy triumphs bleſt:
Whilſt ſullen tyranny no more to riſe,
Low in the duſt, debas'd and vanquiſh'd lies.
Who but abhors a *Bajazet* to ſee?
Who would not wiſh a *Tamerlane* to be?
Oh! lovely virtue, ſuch thy charms appear,
That e'en thy greateſt foes thy name revere!
And you, ye fair! in bright Arpaſia find
Merit well worthy to engage the mind.
How firmly fix'd was her unſhaken love,
Which neither threats nor offer'd crowns could move?
Too few, I fear, are like Arpaſia found,
For ſuch heroic conſtancy renown'd.
—But hark!—methinks I hear a voice this way
Which ſeems, in angry accents, thus to ſay:

"Why

« Why, what a ſtupid epilogue is this:
« Let's ſtop her ſerious prating with a hiſs."—
Good ſir, have patience, I ſhall ſoon have done;
But one ſhort ſentence more and I'll be gone.

Hail happy people! thus with freedom bleſt,
By no inſulting Bajazet oppreſt!
Fair virtue here ſhall fix her radiant throne,
And ignorance and vice in fetters grone.
Here poliſh'd learning ſhall adorn the mind,
And merit ever due reſpect ſhall find;
Whilſt Britiſh liberty—celeſtial ſound,
Bids ev'ry heart be gay, and nature ſmile around.

PROLOGUE

A PROLOGUE

IN PRAISE OF MUSIC—SPOKEN BY MR. HALLAM,

At a play given for purchaſing an organ for the college-hall in Philadelphia.

WITH grateful joy encircling crouds we view,
Well pleas'd the friends of muſic are not few;
Such worthy patrons may it ever find,
And rule with gentle ſway the human mind.

When the loud organ fills the ſacred choir,
The pious ſoul is wrapt in holy fire;
The trembling iſles the ſolemn airs reſound,
And liſt'ning angels hang attentive round;
Harmonious ſtrains with high devotion join,
And ſacred themes make muſic more divine.

Another joy delights yon love-ſick ſwain,
Soft ſounds alone can ſooth his am'rous pain,
And ev'ry warble thrills through ev'ry vein.

Whilſt the bold warrior hails the loud alarms,
When drums and trumpets call to arms! to arms!
His eager ſoul imbibes the martial ſtrain,
And haſtes to preſs the yielding foe again.

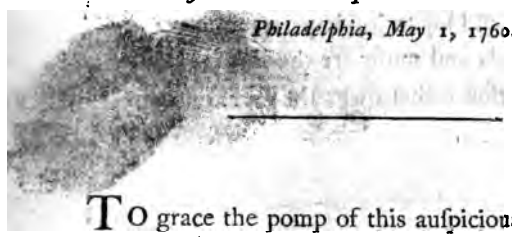
Such

Such pow'r hath muſic o'er the human ſoul,
Muſic the fierceſt paſſions can controul;
Touch the nice ſprings that ſway a feeling heart,
Sooth ev'ry grief, and joy to joy impart.
Sure virtue's friends and muſic are the ſame,
And bleſt that perſon is that owns the ſacred flame.

CHA-

CHARITY, A POEM.

Delivered by the author at a public commencement in the college of Philadelphia, May 1, 1760.



TO grace the pomp of this auſpicious day,
Once more with joy, we ſwell th' advent'rous lay.
Oh! thou, who oft from yon Pierian height,
Mid æther pure directs thy eaſy flight!
Diffuſive ardor to my ſong impart,
And with thy fire dilate my glowing heart!
Say, who is ſhe that firſt in virtue's train,
With grace celeſtial treads th' ideal plain?
Her awful beauty dignifies the place,
And modeſt joy illumines all her face;
Around her form effulgent glories play,
Mild as the luſtre of the dawning day—
'Tis *Charity*, th' enraptur'd muſe replies,
'Tis *Charity*, bright offspring of the ſkies.

On the proud top of that aſpiring height,
Stands *Oſtentation*'s fane, expos'd to ſight;
The front, whoſe ſummits pierce the vaulted ſky,
Gay gilded glitter to the diſtant eye;
O'er the rich portal, in a golden glare,
The name of *Charity* is written fair—

—'Tis

'Tis all deception—charity we know
Loves not to dwell mid pomp and empty ſhow.
There rural joys in vain we hope to find,
'Tis all a barren wilderneſs behind;
No dying muſic melts upon the ear,
And not one roſe perfumes the ſickly air.

But down in yonder vale, recluſe from ſight,
An humble dwelling ſtands, ſeat of delight—
Where ſoft ey'd *Charity* retir'd is found,
'Mid thouſand ſweets that circle her around.
No high wrought arches lead the pompous way,
No gilded domes outſhine the face of day;
A ſecret path enrich'd with many a ſweet
Direct her vot'ries to the bleſt retreat;
There, rural beauties all the ſenſes pleaſe,
And liquid muſic floats in ev'ry breeze.

Happy, thrice happy, he whoſe pious breaſt
Detains ſoft *Charity*, a glowing gueſt!
Whoſe lib'ral hand, as far as pow'r is giv'n,
Spreads bleſſings round him, like the hand of heav'n:
Who glows with love, gen'rous and unconfin'd,
Whoſe boſom burns for good of all mankind:
Who rears the head of virtue in diſtreſs,
Rejoicing ever in the pow'r to bleſs.
How oft, in ſorrows clouded, may we find
The ſhining traces of a gen'rous mind?
How oft doth want and ignorance control
The ſtruggling efforts of a mighty ſoul?
See yonder youth, whom inauſpicious fate
Hath ſunk obſcurely in a low eſtate:

What

What tho' by birth, no titles, wealth, or fame,
With borrow'd glories deck his humble name?
Yet nature's courteous hand with care moſt kind,
Hath form'd his body, and enrich'd his mind:
Life glows as warm in ev'ry throbbing part,
And blood as rich flows round his beating heart.
Faſt bound in ignorance, by want ſuppreſt,
An active ſoul ſlept ſilent in his breaſt.
Oh! pious *Charity*: to call it forth,
And bid it riſe to dignity and worth;
To warm his breaſt with ſentiments refin'd,
And dawn the day of knowledge on his mind:
To teach him virtue's dictates to purſue,
And place the rocks of error in his view.
* Some ſuch there are, without whoſe friendly care,
Long had his ſeeds of glory ſlumber'd there:
Without whoſe bounty all his pow'rs had been
The ſlaves of ignorance, perhaps of ſin.
Of deeds like theſe, oh! who ſhall ſing the praiſe,
Weak is the muſe, and feeble are her lays—
But angels ſilver-tongu'd from heav'n ſhall part
To whiſper bleſſings to the bounteous heart:
And thoſe who juſtly *Charity* regard,
Will find that virtue is her own reward.

DESCRIP-

* The truſtees of the college, who maintain a charity ſchool for 70 poor children.

DESCRIPTION OF A CHURCH.

AS late beneath the hallow'd roof I trod,
Where ſaints in holy rapture ſeek their God;
Where heart ſtung ſinners ſuing Heav'n for grace,
With tears repentant conſecrate the place.
Oh! how my ſoul was ſtruck with what I ſaw,
And ſhrunk within me in religious awe:

The maſſy walls, which ſeem'd to ſcorn the rage
Of battering tempeſt and of mouldering age;
In long perſpective ſtretch'd, till breadth and height
Were almoſt loſt in diſtance from the ſight;
With monumental decorations hung,
They ſpoke mortality with ſilent tongue.
There, ſorrowing ſeraphs heav'nward lift their eyes,
And little cherubs weep ſoft elegies.
I trod—and ſtarted at the mighty noiſe;
The hollow pavement lifted up its voice;
The ſwelling arch receiv'd the riſing ſound,
Reſponſive to the ſtroke the walls around,
And ſent it murm'ring to the the vaults around,
Thro' lengthen'd aiſles prolong'd the ſolemn ſound.

Far in the weſt, and noble to the ſight,
The gilded *organ* rears its tow'ring height;

And

And hark! methinks I from its boſom hear,
Soft iſſuing ſounds that ſteal upon the ear
And float ſerenely on the liquid air.
Now by degrees more bold and broad they grow,
And riot looſely thro' the iſles below;
'Till the full organ lifts its utmoſt voice,
And my heart ſhudders at the powerful noiſe:
Like the laſt trump, one note is heard to ſound
That all the maſſy pillars tremble round;
The firm fixt building ſhivers on its baſe,
And vaſt vibration fills th' aſtoniſh'd place:
The marble pavements ſeem to feel their doom,
And the bones rattle in each hollow tomb.

But now the blaſt harmonious dies away,
And tapers gently in a fine decay:
The melting ſounds on higher pinions fly,
And ſeem to fall ſoft oozing from on high;
Like evening dew they gently ſpread around
And ſhed the ſweetneſs of heart-thrilling ſound;
'Till grown too ſoft, too fine for mortal ear,
The dying ſtrains diſſolve in diſtant air.
Methought I heard a flight angels riſe,
Moſt ſweetly chaunting as they gain'd the ſkies:
Methought I heard their leſs'ning ſound decay
And fade and melt and vaniſh quite away.

Hail heav'n born muſic! by thy pow'r we raiſe
Th' uplifted ſoul to acts of higheſt praiſe:
Oh! I would die with muſic melting round,
And float to bliſs upon a ſea of ſound.

TO CELIA,

ON HER WEDDING DAY.

WHILST Heav'n with kind propitious ray,
Smiles, *Celia*, on thy nuptial day,
And ev'ry ſympathiſing breaſt
With tranſport glows to ſee thee bleſt;
Whilſt preſent joys the hours beguile,
And future proſpects ſeem to ſmile.
Shall not my muſe her tribute bring
And gladly touch the trembling ſtring?
I know 'tis uſual at ſuch times
To pay reſpect in pompous rhymes;
To bid the whole celeſtial race
With brighteſt glories fill the place,
And from their manſions haſten down
The nuptial rites with bliſs to crown:
As if each goddeſs might be ſaid
To be the poet's waiting maid:
But I who have no power at all,
Such high divinities to call,
Muſt lay thoſe ſtratagems aſide
And with plain fable treat the bride.

And

As *Cupid* thro' the azure way
Did late with wand'ring pinion ſtray,
The little urchin chanc'd to ſpy;
His maſter *Hymen* paſſing by;
Surpris'd with conſcious guilt and ſhame,
Knowing his conduct much to blame,
With nimble haſte he ſtrove to ſhroud
His preſence in a fleecy cloud.
But Hymen ſaw, nor could *he* fail
To ſee a wing—oh! piteous tale!
Peep from behind the miſty veil.
Th' obſerving god with eager joy,
Ruſh'd on and ſeiz'd th' affrighted boy.—
" Well, maſter *Cupid*, are you caught
" At laſt, he cry'd, I almoſt thought
" You, far from hence, had taken flight,
" And quite forſook the realms of light;
" For whereſo'er I chooſe to ſtray,
" I ſeldom meet you in my way.—
" Wherefore ſo ſhy? ſince well you know
" It is not very long ago
" Since *Jove* in council did decree,
" Yourſelf and ſervices to me;
" That it might ever be your care,
" To warm thoſe breaſts whom I would pair
" With mutual love, and bleſs my bonds,
" By mingling hearts with joining hands.
" Inſtead of which, you rambling go,
" And ſad confuſions make below:

Whilſt

" Whilſt my ſoft~~eſt~~ bondage often falls,
" Where cuſtom points or int'reſt calls.
" But *Jove* himſelf ſhall quickly hear,
" How much his dictates you revere;
" Yet e'er we part, 'tis my deſire,
" You kindle love's celeſtial fire
" In the fair *Celia's* peaceful breaſt,
" And make her am'rous *Strephon* bleſt."
With piteous tone, and tear-full eye,
Thus did the little god reply:
" This, *Hymen*, this I muſt deny,
" Do—any other ſervice chooſe,
" There's nought but *this* I can refuſe;
" I have my word and honour giv'n,
" And firmly ſworn by earth and Heav'n,
" That love ſhall *Celia* ne'er moleſt
" No dart of mine e'er wound her breaſt.
Hymen, firſt made an angry pauſe,
Then ſpake—" Thou traitor to my cauſe,!
" Is't thus with mortals you conſpire,
" To break my torch and quench my fire;
" I oft have wonder'd why that maid
" My ſoft encircling bands delay'd;
" The wonder ceaſes now; I find
" That *you* and Celia have combin'd,
" My pow'r celeſtial to deſpiſe
" And rob me of my paireſt prize.
" But *Celia* ſoon in wedlock's chain
" Shall ſhine the faireſt of my train:

" Virtue her days with peace ſhall crown,
" And I will ſhow'r my bleſſings down ;
" Her happy ſtate ſhall others move,
" To ſeek the joys of weded love."
Much would the weeping boy have ſaid ;
But *Hymen* urg'd, and love obey'd :
A ſhaft he choſe from out the reſt,
And ſunk it deep in *Celia's* breaſt.
Soft thro' her frame the poiſon crept ;
And *Hymen* laugh'd and Cupid wept.
Then upwards, far from human ſight,
They wing'd their way in ſpeedy flight,
Wrapt in a glorious blaze of light.

A PARAPHRASE.

ON THE 107th PSALM.

WITH choral voice, oh! let the nations join
And bleſs the Lord in harmony divine:
His tender mercy over all extends,
And vaſt creation on his pow'r depends.
Let thoſe, with grateful hearts, his goodneſs tell
And to his praiſe the ſolemn anthem ſwell;
Whom he vouchſaf'd with kind directing hand,
To lead in ſafety from a hoſtile land;
At once with hunger and with thirſt oppreſt,
The fainting ſoul pin'd in the panting breaſt.
In deep diſtreſs they call'd on God moſt high,
Who with his wonted mercy heard their cry:
The heav'ns did mana for their food diſtill,
And from the rock burſt forth the limpid rill:
From deſert wilds, where deſtitute they roam,
He brings at length the wearied wand'rers home;
They conquer, by his aid, the nations round,
And fill a land with cheerful plenty crown'd.

Oh! that the people, with united voice,
Would in the mercies of the Lord rejoice;
His holy name in hallelujahs bleſs,
And all the wonders of his pow'r confeſs:
To hungry ſouls he doth his joy impart,
And with ſweet comfort ſoothe the wounded heart.
But thoſe who light eſteem'd his proffer'd love,
Did ſoon the terrors of his vengeance prove;
His injur'd juſtice will o'ertake his foes,
And puniſh all who dare his pow'r oppoſe:
Long in a dungeon's dreary depth they lay,
Shut from the radiance of the chearful day;
Where gall'ng chains their captive limbs confin'd,
And waſting anguiſh prey'd upon the mind.
But when to heav'n they lift their ardent pray'r,
And all the miſeries of their ſtate declare;
Sincerely ſwell the penitential ſigh,
And for offended mercy loudly cry:
The God of mercy ſends a quick relief,
And ſongs of triumph ſoon diſpel their grief:
He breaks their bands, wipes all their tears away,
And on their darkneſs pours reviving day.

Oh! that the nations, with united voice,
Would in the mercies of the Lord rejoice;
His holy name in hallelujahs bleſs,
And all the wonders of his pow'r confeſs!

The guilty wretch is puniſh'd for his ſin;
A wounded conſcience tortures him within;

With

With growing horror, aggravated fear,
He ſees the ſtroke of death already near:
Then, if to *God* his ſorrowing ſoul returns,
And with contrition deep her treſpaſs mourns,
The ear of pity waits on his diſtreſs,
And ready pardon will repentance bleſs:
The hand of mercy ſtops the hand of death,
The voice of love recalls his fleeting breath.

Oh! that the nations, with united voice,
Would in the mercies of the Lord rejoice;
His holy name in Hallelujahs bleſs,
And all the wonders of his pow'r confeſs!

Thoſe who in ſhips purſue their dangerous way
Thro' the vaſt empire of the trackleſs ſea,
Behold the pow'r of Heav'n's almighty king,
And with a fearful awe his praiſes ſing.
At his tremendous word the billows riſe,
And clouds glide ſwiftly thro' the floating ſkies;
Sulphureous lightnings dart from pole to pole,
And o'er the burden'd æther heavy thunders roll;
The howling tempeſt ſeems to ſhake the globe,
Whilſt troubled nature wears her darkeſt robe:
Yet doth the little bark the tumult brave,
And on the white top of the burſting wave
Quivering ſhe hangs—her maſts the clouds divide,
And from beneath, hell opes her portals wide:
Confuſion reigns o'er all the watry realm;
Th' aſtoniſh'd ſeamen quit the uſeleſs helm:

With growing terrors are their boſoms fill'd,
And in their veins the purple currents chill'd:
In their diſtreſs to God they lift their pray'r,
And tho' the tempeſt roars, the Lord will hear:
The ſame dread word that ſwell'd the boiling main,
Commands a calm, and all is ſmooth again;
Their terrors vaniſh, whilſt propitious gales
Swift to the port impel their ſwelling ſails.

Oh! that the nations with united voice,
Would in the mercies of the Lord rejoice;
His holy name in hallelujahs bleſs,
And all the wonders of his pow'r confeſs!

The fruitful land is blaſted for the ſin
Of the rebellious race that dwell therein:
The ſprings forget to flow, the clouds to pour,
Upon the parched plains their wat'ry ſtore;
In vain the huſbandman with patient toil
Provokes to plenty the unyielding ſoil;
The drooping plant wither'd and barren dies,
Whilſt all its vegetative moiſture dries.

But unexhauſted plenty from the Lord
Attend on thoſe, who by his holy word
Direct their ſteps—for them ſhall gardens grow
In deſert wilds and bubbling fountains flow:
Their flocks, their herds, their vineyards ſhall increaſe,
And ſmiling plenty dwell with gentle peace.

Such are the bleſſings that await the juſt,
The lot of thoſe who place in God their truſt:
Then let the wiſe by virtue hope to prove,
The laſting mercies of his endleſs love:
For who can bear of guilt the ſecret ſting,
Or dare to vengeance Heav'ns almighty king.

AN ELEGY.

SACRED TO THE MEMORY OF

JOSIAH MARTIN, ESQ. JUN.

WHO DIED IN THE ISLAND OF ANTIGUA, JUNE 1762.

'TWAS evening mild—the ſun's declining ray,
No longer flamed from the weſtern ſky;
But ſtars contended with the fading day,
And creeping twilight boded darkneſs nigh.
With wand'ring ſtep, ſlow pace and penſive look,
I ſought the ſilence of the darkſome grove;
Where weeping ſorrow ſwells the murm'ring brook,
And contemplation, lonely, loves to rove:
In the deep gloom the ſudden ſounds I hear
Of dulcet prelude from the warbling lyre;
The voice of woe ſtole plaintive on my ear,
And thus accorded to the trembling wire:
"Let proud ambition with her faithleſs throng,
As int'reſt points, addreſs the venal ſong;
Still in the paths of labour'd flattery toil,
And ſeek for virtue in a barren ſoil.

Let

Let it be thine, my artleſs muſe, to raiſe,
To modeſt merit, well deſerved praiſe;
For goodneſs loſt, to bid thy numbers flow,
In the ſmooth ſtrains of unaffected woe,—
From bloſſom'd hopes, and life's moſt flow'ry height,
See *Martin's* ſpirit wings eternal flight;
Not wiſdom, truth, and innocence combin'd,
A graceful perſon, an informed mind
Prevent the ſtroke—he meets a haſty doom;
Death ſhrouds his riſing glories in the tomb:
Mourn then, my muſe, in ſtrains elegiac mourn,
And deck with cypreſs his untimely urn.

In vain for thee, beloved youth, in vain,
We ſtrove the heights of ſcience to attain;
Say, can I e'er forget thoſe bliſsful days,
* When hand in hand we trod the flow'ry maze?
Say, can I e'er forget the warmth divine
That from thy heart did in each action ſhine?
Each winning grace, and all thy pow'r to move
By ſoft perſuaſion, undiſſembled love:
Thy ſtrength of reaſon paſſion to controul,
And the ſweet temper of thy yielding ſoul;
Thy ſteady friendſhip, ſentiments refin'd,
With all the gentle virtues of thy mind.
Oh! fate ſevere! juſt to o'ercome the toil
Of early life, and ſee the proſpect ſmile
With dawning bliſs;—but never to enjoy—
Too ſudden ſhades the riſing ſcene deſtroy.

'Twas

* He was fellow ſtudent with the author.

'Twas thus * the Prophet, by divine command,
From Piſgah's top beheld the promis'd land:
He ſaw—and died; for ſo did Heav'n ordain—
But *God* is juſt, and let not man complain.

* Moſes.

AN EPITAPH.

FOR AN INFANT.

SLEEP on, ſweet babe! no dreams annoy thy reſt,
Thy ſpirit flew unſullied from thy breaſt:
Sleep on, ſweet innocent! nor ſhalt thou dread
The paſſing ſtorm that thunders o'er thy head:
Thro' the bright regions of yon azure ſky,
A winged ſeraph, now ſhe ſoars on high;
Or, on the boſom of a cloud reclin'd,
She rides triumphant on the rapid wind;
Or from its ſource purſues the radiant day;
Or on a ſun-beam, ſmoothly glides away;
Or mounts aerial, to her bleſt abode,
And ſings, inſpir'd, the praiſes of her *God*:
Unveiled, thence, to her extenſive eye,
Nature, and Nature's Laws, expanded lie:
Death, in one moment, taught this infant more
Than years or ages ever taught before.

DISAPPOINTED LOVE.

RECITATIVE.

HIGH rais'd in æther, from her ſilver throne,
The moon in melancholy mildneſs ſhone;
Nor voice, nor ſound diſturb'd the mid-night hour,
Save the ſad ſouth-wind murm'ring in the bow'r;
When ſable clad, with ſlow and penſive mien,
Narciſſa lonely paſs'd the duſky green:
All wan with waſting grief, forſook her bed,
And ſought the ſilent manſions of the dead;
Her boſom heav'd with many a deep drawn ſigh,
And the big tear ſtood trembling in her eye:
Then from her lips thus broke the voice of woe—
Then planets liſten'd, and the moon mov'd ſlow.

AIR.

Farewell to all that promis'd joy;
No flatt'ring hopes my thoughts employ;
A wounded heart bleeds in my breaſt,
And death alone can give me reſt.

And

And thou, lamented youth, farewell!
With thee the ſmiling proſpect fell;
Sad o'er thy grave, broods black deſpair,
For all my hopes lie buried there.

But now thy form mov'd in my ſight,
I glow'd with love and dear delight;
Thy boſom burn'd with equal fire,
With equal pangs of ſoft deſire.

But now I deck'd me for thy bride;
Elate in youth and beauty's pride,
My throbbing heart beat quick alarms,
Whilſt bliſs approach'd in *Damon's* arms.

A voice ſoon ſtrikes my ſtartled ear,
Whoſe diſmal accents yet I hear;
Forbear, fond maid, forbear, it cries,
For *Damon*, thy lov'd *Damon*, dies.

All ſtrength forſakes my tott'ring frame;
My tongue ſcarce utters Damon's name;
Proſtrate I fall; my eye-balls roll,
And anguiſh wrings my tortur'd ſoul.

Yet, yet I hear the deep ton'd bell,
With minute ſtrokes tell out his knell;
My ſwelling heart grows big with grief,
And not one tear vouchſafes relief.

Oh! if beneath yon pale moon's ſphere,
Thy lambent ſpirit floats in air,

Witneſs my ſigh's, hear me complain,
And pity my unequal'd pain.

Whilſt bitter grief and pining woe,
And welcome death at laſt will ſhow,
How hard their fate who ever prove
The pangs of *diſappointed love.*

AN EXERCISE:

Containing a DIALOGUE* and ODE, ſacred to the memory of his late gracious majeſty GEORGE II.—Performed at the public commencement in the College of Philadelphia, May 1761.

The Ode ſet to muſic by F——— H———.

EUGENIO.

WHAT means that look of woe, the head reclin'd,
Thoſe folded arms with which I meet Amyntor?
That eye, which wont with love and ſparkling joy,
To beam munificent on ev'ry friend;
Why bends it thus in ſorrow to the ground,
As if no view could pleaſe but duſt and earth?

AMYNTOR.

All things, Eugenio, are but duſt and earth!
E'en kings themſelves—thoſe demi-gods enthron'd,
Rulers of empire, thunder-bolts of war,
At whoſe avenging nod the guilty tremble,
Nations are doom'd, and millions live or die—
E'en kings, themſelves, are nought but duſt and earth!

EUGENIO.

Who knows not that, Amyntor? But why damp
This feſtive day with ſuch untimely lectures?

AMYN-

* The dialogue by the rev. Dr. Smith.

AMYNTOR.

What feſtive day can Britain or her ſons
Now celebrate? The voice of joy is fled.
Let no raſh hand with myrtle or with bay,
Or other flaunting foliage of the grove
Preſume to deck theſe walls. Come baleful yew,
And weeping cypreſs, from your midnight ſhades!
None other wreathe but your's from hill or dale
Be pluck'd to circle academic brow.
See pale *Britannia* on the wave-worn ſhore,
Incumbent o'er her maſſy trident weeps;
And fond *Ierne*, ſiſter of her grief,
Calls from her harp ſad notes of Doric ſtrain.
From pole to pole, far as old ocean heaves
His troubled waves, and bears the *Britiſh* flag,
The voice of woe is heard. E'en *here* remote,
The awful genius of theſe barbarous woods,
That wont to roam from *Indian* height to height
With nature's ſelf, in frolic ever new,
Tears from his hoary head his feather'd crown,
And breaks his arrows, and his quiver rends.

EUGENIO.

In myſtic words, and metaphoric ſtrains,
Why would Amyntor ſtrive to hide the cauſe
Of ſuch unbounded ſorrow?

AMYNTOR.

——————No, Eugenio!
Amyntor would not hide, but ſpeak the cauſe,
Could words be found to meaſure forth his grief,

And

And eaſe his lab'ring breaſt. The god-like *George*,
The friend of freedom, and the ſcourge of tyrants,
The father of his country—ſleeps in duſt;
Of import dreadful from Britannia's coaſt,
Confirm'd and full, the mournful tidings come.

EUGENIO.

Illuſtrious monarch! not the *Roman* boaſt,
The gen'rous *Titus*, joy of human kind;
Nor names of later date, *William* and *Henry*,
Or *Alfred*'s ſelf, ſhall fill a brighter page
In fame's eternal roll, than ſhall the name
Of gracious *George*. Beneath his equal ſway
Oppreſſion was not; *Juſtice* pois'd her ſcale;
No *law* was trampled, and no *right* deny'd:
The merchant flouriſh'd, and the peaſant ſmil'd.
And, oh! my friend, to what amazing height
Of ſudden grandeur did his nurſing care
Up-raiſe theſe colonies; beyond whate'er
Of ancient or of modern times is told.
Prepare we then, due elegies to frame,
Such as may well accord to heart of woe.

AMYNTOR.

That work is done. Behold the goodly choir,
With voice united to the deep-ton'd note
Of ſwelling organ, riſe in act to ſing
The conſecrated lay—Hark! hark! they ſtrike!—

THE ODE.

RECITATIVE.

WHY looks the viſionary maid ſo ſad,
Ah! why, *Britannia*, thus in ſable clad?
Oh! ſpeak the cauſe from whence ſuch ſorrows flow,
That, by partaking, we may eaſe thy woe.

AIR.

Lend, lend your tears, ye virgin train,
Let muſic ſwell her ſofteſt ſtrain!
Oh! make the ſolemn dirge reſound,
And ſpread religious ſorrow round—
With me the deep-felt loſs deplore—
My ſon! my ſon! is now no more!

CHORUS.

Then let the ſolemn dirge begin,
Whilſt we our voices join,
To ſwell the tend'reſt note of grief,
And mix our woe with thine.

A ſlow

A ſlow ſymphony.

AIR.

The glorious ſun, *Britannia*'s king,
Withdraws his golden light:
His ſetting ray
Glides ſwift away,
And yields to conq'ring night.

Down in the deep and dreary tomb
His mortal part muſt lie;
And ev'ry bell
Now tolls his knell,
Tears flow from every eye.

Far o'er the wild and wat'ry waſte,
Hear the loud cannons roar;
'Till winds convey
The ſounds away,
That die along the ſhore.'

But, lo! his fainted ſoul aſcends
High thro' th' etherial road;
And *Briton*'s ſighs
Like incenſe riſe,
To waft him to his *God.*

EUGENIO.

How ſoft the pow'r of muſic to aſſuage
The pangs of grief! like balm of coſtly price
Pour'd o'er the ſtreaming wound. Since then, my friend,
Due tribute has been paid to royal worth,

And royal duſt; it boots us not to ſpend
Our fleeting hours in unavailing ſorrow.
See! by the bounty of all ruling heav'n,
Another *George* to happy *Britons* giv'n:
Gay youth and glory beam around his throne,
And glad *Britannia* claims him as her own.
Let us embrace what heav'n in kindneſs gives,
Since *George* the *Second* in the *Third* ſtill lives.

AN

AN EXERCISE;

Containing a DIALOGUE * and ODE, on the acceſſion of his preſent gracious majeſty GEORGE III.—Performed at a public commencement in the College of Philadelphia, May, 1762.

The Ode ſet to muſic by F—— H——.

LORENZO.

ENOUGH, ye ſons of ſcience! honours meet
At your maternal ſhrine have now been paid.
From the fair font of *Helicon* divine
Pure living ſtreams, enraptur'd, have ye drawn,
Of claſſic lore, and bade them copious flow,
To grace the proſpects of this feſtive day.
Meanwhile, each patriot eye with tranſport gaz'd;
Each friend of worth, of ſcience, and of man,
With cheering ſmiles their ſilent plaudit gave.

Say then, my friends, have ye no chaplets weav'd,
No jocund ſong prepar'd of ſprightlieſt ſtrain,
To crown the labours of the learned tribe,
And ſooth with warblings ſweet the parting ear?

EUGENIO.

Yes, my Lorenzo, grateful will we pay

* The dialogue by the rev. Mr. Duché.

All ſeemly tribute to this glad occaſion:
Nor chaplets gay, nor ſong of ſprightlieſt ſtrain
Will we refuſe. See good Amyntor's eye
Sparkles with joy, and ſpeaks ſome rapt'rous theme.

AMYNTOR.

What theme more joyous, or can better ſuit
The glad return of this auſpicious day,
Than that which occupies my preſent thought,
And which the faithful index of my heart
Pointed to thy diſcerning?—Know, Eugenio,
The joy that ſports in thy Amyntor's breaſt,
And o'er his viſage ſpreads this placid ſmile,
Springs from no other ſource than the loud fame
Of his young monarch's worth.—Be this our theme.

EUGENIO.

And is it thus, Amyntor? ah! how ſoon
To ſounds of grief ſucceeds the voice of joy!
And gilded trappings to the garb of woe.
Far other ſcenes thy lab'ring breaſt diſclos'd,
When laſt I met thee at theſe annual rites:
With viſage wan, with dark and downward brow,
When royal duſt receiv'd the duteous tear;
When trembled with the dirge this ſtately dome,
And gloom'd theſe hallow'd walls with wreaths funereal.

AMYNTOR.

Oh! name it not, my friend! all cuſtom'd dues
To majeſty entomb'd were then diſcharg'd.
To dwell deſponding on the mournful theme,

Or hang like ſtatues o'er the kingly urn,
Pale, motionleſs as marble; this were impious;
A cenſure weak and raſh of heav'n's decree.
Shout then, ye favour'd race, ye ſons of freedom,
Bound ev'ry heart with joy, and ev'ry breaſt
Pour the warm tribute of a grateful praiſe!
For o'er the realms of *Britain* reigns ſupreme
The darling of his people, *George* the *Good.*
Bright cluſt'ring round his throne the virtues ſtand
In meet array, obſequious at his call,
To fly, triumphant, thro' his wide domain,
And deal their ſalutary influence round.

LORENZO.

Thrice happy monarch! ſkill'd in ev'ry art
To win a nation's ſmile, and fix their love.
Thy youthful bloſſoms are the earneſts ſure
Of future glories to thy native land.
Hence, in the mighty rolls of *Britiſh* fame,
Thy reign ſhall ſhine diſtinguiſh'd mid the reſt,
By deeds of valour, piety, and love.

AMYNTOR.

Nor only in the ſphere of royalty,
The wiſe exertions of his kingly pow'r,
Doth *George* illuſtrious move: each milder virtue,
Each ſoft endearing ſcene of private life
His tender ſoul embraces: modeſt worth,
Grace unaffected, true ſimplicity,
With dignity combin'd, each nameleſs joy
That *Hymen* twines around his ſilken bands,

He

He meets with tranſport in his *Charlotte*'s arms,
The pleaſing partner of his heart and throne.

But let us not in fond and growing parley
Thus waſte the day.—Begin ye choral band,
For whom the feſtive ſong hath ben prepar'd,
And with loud *Pœans* rend the vaulted roof.

THE ODE.

BRIGHT aſcending to the ſkies,
See *Britannia's* glory riſe!
Ceaſe your ſorrows, ceaſe your fears,
Night recedes and day appears;
Another *George* majeſtic fills her throne,
And glad *Britannia* calls him all her own.

CHORUS.

Let the tuneful chorus join,
And high their voices raiſe,
To celebrate in notes divine,
The *youthful* monarchs praiſe.

AIR.

Rejoicing ſcience with each poliſh'd art,
Beneath his reign ſhall with ſucceſs conſpire
To form the manners, humanize the heart,
And virtuous thoughts, and virtuous deeds inſpire.

II.

The ſweets of liberty ſhall care beguile,
And juſtice ſtill her happy influence ſpread,
Religion cheer him with a ſacred ſmile,
And bid the crown ſit lightly on his head.

CHORUS.

Let the tuneful chorus join,
And high their voices raiſe,
To celebrate in notes divine
The *pious* monarch's praiſe.

AIR.

See reſplendent at his ſide,
Joyful ſits his royal bride:
Glowing youth and beauty join
To make the fair conſpicuous ſhine:
Ev'ry virtue warms her breaſt—
How is *Britain*'s monarch bleſt!
Unſullied bliſs ſhall crown the royal pair,
The *good* and *great* are heav'n's peculiar care.

CHORUS.

Let the tuneful chorus join,
And high their voices raiſe,
To celebrate in notes divine
The *happy* monarch's praiſe.

AIR.

Rough war ſhall humbly at his feet
Her bloody laurels lay;

Him gentle peace ſhall kindly greet,
And ſmile beneath his ſway.

II.

Hail! *Britain*, hail! theſe golden days;
Illuſtrious ſhalt thou ſhine;
For GEORGE ſhall gain immortal praiſe,
And, *Britain*, GEORGE is thine.
To diſtant time he ſhall extend his name,
And give thy glories to a deathleſs fame.

CHORUS,

Let the tuneful chorus join,
And high their voices raiſe,
To celebrate in notes divine,
The *Britiſh* monarch's praiſe.

AN ODE

Deſigned for a public commencement in the college of *Philadelphia*.

RECITATIVE.

WHEN heav'n ſpreads bleſſings with unſparing hand,
And ſmiling plenty crowns the joyful land,
The happy peaſants tune their ruſtic lay,
And back to heav'n their grateful tribute pay:
And ſhall not we enraptur'd ſnatch the lyre,
And ſing to ſtrains which thankful hearts inſpire,
When heav'n conſents, and men unite to bleſs
This ſeat of ſcience with enſur'd ſucceſs?

CHORUS.

Riſe! riſe! ye ſons of ſcience, riſe!
Your loudeſt ſtrains employ;
With glowing fire,
Attune the lyre
To gratitude and joy.

AIR.

* Hail to the king! whoſe virtuous heart
Directs his lib'ral hand,

To

* His gracious majeſty George III. who granted a brief for making a collection through the kingdoms of England, Scotland and Ireland, *for the benefit of this* inſtitution.

To ſtretch o'er wide extending ſeas,
And bleſs a diſtant land.
Oh! let the num'rous throng that daily prove
The ſweet effects of his paternal love,
Unite their hearts in one accord and ſing
In acclamations loud, *Hail to the king!*

CHORUS.

Riſe! riſe! ye ſons of ſcience, riſe!
Your loudeſt ſtrains employ;
With glowing fire,
Attune the lyre
To gratitude and joy.

AIR.

* A gen'rous throng demands our love,
Who in a deſert wild,
Heard infant ſcience cry for help,
And nurs'd the drooping child:
Tho' men forget, heav'n will the deed record,
And to their race extend the bleſt reward.

CHORUS.

Riſe! riſe! ye ſons of ſcience, riſe!
Your loudeſt ſtrains employ;
With glowing fire,
Attune the lyre
To gratitude and joy.

AIR.

* The many benefactors who freely contributed on this occaſion.

AIR.

And can the muſe forget his * toil,
Who compaſs'd ſea and land
To rear the tender plant which oft
Had felt his pruning hand?
Oh! let his care and unexampled love,
Our juſt returns of warm affection move!

CHORUS.

Riſe! riſe! ye ſons of ſcience, riſe!
Your loudeſt ſtrains employ;
With glowing fire,
Attune the lyre
To gratitude and joy.

SCIENCE,

* The rev. Dr. Smith, who carried about the brief and received the contributions.

SCIENCE; A POEM.

Humbly inſcribed to the *Truſtees, Provoſt, Vice Provoſt,* and *Profeſſori* in the College and Academy of PHILADELPHIA.

Doctrina ſed vim promovet inſitam,
Rectique cultus pectora roborant. HOR.

1762.

DEDICATION.

To the *Truſtees, Provoſt, Vice Provoſt,* &c.

GENTLEMEN,

It is not without great expectations from your candour and indulgence that I am encouraged to lay this little Poem at your feet.

I do not flatter myſelf that your inſtitution will hereby gain any additional luſtre, but I would take this opportunity of publicly acknowledging my affection and gratitude to that ſeat of *Science.*

May all your undertakings for its advancement meet with more than expected ſucceſs; and may it never want friends to ſupport it with equal zeal, but greater abilities, than I can boaſt.

I am, Gentlemen,
Your much obliged
And humble ſervant,
F. H.

SCIENCE;

SCIENCE; A POEM.

GODDESS ſublime! on whoſe advent'rous wing,
Like the ſweet lark, fleet fancy mounts to ſing;
Whether it chance to pleaſe thee, youthful queen,
With airy ſtep to grace the rural ſcene;
Or ſoftly languiſh thro' the breezy grove,
In all the dying tenderneſs of love:
Whether thro' ſome untrodden flow'ry way,
With contemplation mild, thou lov'ſt to ſtray;
Or on a tempeſt's rapid fury riſe,
And dip thy plumage in the wat'ry ſkies;
Or moon-light wand'ring by the wave worn ſhore
Wait on old *Ocean's* melancholy roar:
Where'er thou art, once more my pray'r attend;
Once more celeſtial muſe thy influence lend.

Fair ſcience ſoft'ning with reforming hand,
The native rudeneſs of a barb'rous land:
Her radiant throne uprais'd by pow'r divine,
Her num'rous ſons low bending at her ſhrine.
Joyful I ſing—oh! may my numbers ſeem
To flow inſpir'd, and equal to my theme.

He

Ye *friends of learning*, patronize my ſong,
To you the tributary ſtrains belong:
But chiefly*, *thou* beneath whoſe gentle ſway
The muſe delights to tune her grateful lay:
Glad ſcience, thee, ſhall her Mæcenas hail,
Wiſdom ſhall ſmile and heav'nly truth prevail!
In yonder dome—it boaſts no pompous name,
Yet not the leſs ſhall fill the page of fame,
Bright ſcience dwells—how honour'd the retreat,
Where ſcience deigns to fix her fav'rite ſeat.
High from the throne ſhe beams celeſtial day;
And diſtant lands confeſs th' enliv'ning ray:
The graces ever in her preſence ſtand
And virtue blooms beneath her nurſing hand.

There firſt her youthful vot'ry learns to pleaſe
By juſt expreſſion and becoming eaſe—
Delightful taſk, with early care to teach
The liſping tongue propriety of ſpeech.
See on the ſtage the little hero ſtands,
With eyes uplifted, with extended hands:
Or from his lips Pope's liquid numbers flow,
In ſtreams mellifluous—See the conſcious glow
Burns on his cheek—perhaps the ſtrains inſpire
The infant raptures of poetic fire:
Perhaps 'tis modeſty, with native grace,
Calls forth the roſes in his youthful face:

Or

* The honourable James Hamilton, Eſq. Lieutenant Governor of the province of Pennſylvania.

O now the force of eloquence he tries,
And attic light'nings kindle in his eyes.
Methinks I ſee the deep touch'd ſenate glow
While mimic thunders threaten from his brow;
Or now his gentle voice in borrow'd lays,
Swells the ſmooth tribute of his Maker's praiſe:
See the warm ardor of the ſaint expreſt,
As if the numbers fir'd his little breaſt:
What joy to hear; what raptures to behold,
The youthful bard, ſo graceful and ſo bold:
In virtues cauſe—bright truth ſhall ſoon inſpire
The living ardors of a real fire.

But now glad ſcience to his riper age
Unfolds the treaſures of the claſſic page:
Sweet *Heliconian* draughts enrich his ſoul;
From the pure ſtream he drinks without controul.
Virgil for him awakes the tuneful lyre,
And laviſh Pindar pow'rs forth all his fire.
Pious *Æneas*, who attends thy woe
But deeply feels the ſympathetic glow!
Thro' ev'ry page engaging virtues ſhine,
And frequent precepts grace each moral line:
Whilſt *Horace* leads the lyric muſe along
With careleſs eaſe attunes the pleaſing ſong;
Th' unlabour'd thought harmoniouſly expreſt,
Gives gayer tranſport to the youthful breaſt:
Homer more boldly ſtrikes the epic ſtring;
Swift are we borne upon his rapid wing,
Where bleeding heroes ſtain th' enſanguin'd ground,
And angry gods are heard in thunder round.

And now advanc'd the ſtudent loves t'engage,
More arduous heights—the mathematic page
Invites his riper judgment to explore,
The mazy windings of her ſubtle lore:
The pleaſing toil delights th' enquiring youth,
And ſcience guides him to th' entangled truth.

At length behold to his aſtoniſh'd eye,
Nature's vaſt volume all expanded lye;
From the effect he ſeeks the hidden cauſe,
And deeply ſearches her myſterious laws.
Earth, air, nor ſea, nor heav'ns extended ſpace
Can bound the reach of man's aſpiring race;
Upward he lifts the aſtronomic eye,
Surveys thoſe orbs of light that roll on high:
Mid ſun's and blazing ſtars he dares to rove,
And learn th' important laws by which they move:
Sits in the centre, wrapt in thought profound,
And views the radiant ſyſtem rolling round.
To reaſon's eye there ſhall the cauſe appear,
Why various ſeaſons form the changing year:
Spring firſt in mantle green and garlands gay,
Sweet ſmelling as ſhe paſſes, leads the way.
With breezy call awakes each rural ſound,
And fills with muſic woods and valleys round:
Then *Summer* comes light clad in glowing red,
Whilſt the thick foliage nods around her head:
With laviſh bounty from her lap ſhe pours,
Luxuriant gifts of herbage, fruits and flow'rs.
In yellow garb ſee *Autumn* next appear,
To crown with plenty the rejoicing year:

O'er new reap'd fields with airy ſteps ſhe roves,
And paints in various hue the fading groves.
Then boiſterous *Winter* howls along the plain,
Affrighted vegetation ſhrinks again
Back into earth ; woods, hills, and valleys ſtand
Strip'd of their pride by his relentleſs hand :
In icy bonds he holds the water's fall,
And in his ſnowy mantle wraps them all.

Thus ſhall his eye important truths purſue,
And in his works the *Great Creator* view :
The birds on pointed pinions mounting high,
That pour ſhrill muſic from the azure ſky ;
The fiſh that ſporting in the lucid ſtream,
Swift glide and glitter to the ſun's bright beam ;
The herbs medicinal that ſtrew the ground ;
The varied flow'rs that bloom ſpontaneous round ;
The grove, high waving, the green tufted dale,
The pearl deck'd grotto, the ſequeſter'd vale ;
All muſt the philoſophic boſom move,
To wonder, gratitude, and glowing love.

But now the pupil takes his boldeſt flight ;
See adventrous him, climb the tow'ring height,
Of *Ethic* learning—more extenſive fields,
Views more enlarg'd, the boundleſs proſpect yields.
His ſearches now purſue a nobler plan,
Now comes that grand enquiry *what is man ?*
How form'd ? by whom ? thence ſhall he learn to know
From his *connections* what great *duties* flow.

What pow'rs are giv'n thoſe *duties* to fulfill;
How form the *judgment*; how direct the *will*;
When *paſſion* to indulge, when to reſtrain;
And how his *happineſs ſupreme* obtain;
What is the nature of his nobler part;
Why with ambition throbs his anxious heart;
To draw the mid-night curtains of the tomb,
And look for *judgment* and *a world to come*.

From ſuch purſuits what great ideas flow?
See in his viſage conſcious virtue glow:
His views enlarge, enlighten'd is his mind;
More warm his heart, his paſſions more refin'd:
Religion kindles her celeſtial ray,
And truth breaks on him in a flood of day!

Pierian muſe! thy favour ſtill prolong
And let thy preſence animate my ſong!

Now *ſcience* joys to calls the youth her own
And crowns with laurel her adopted ſon:
His *Alma mater* now prepares to ſhed,
Her rich rewards on his diſtinguiſh'd head:
The vaulted hall the riſing anthems rend,
And preſſing crowds the ſolemn rite attend:
Prepar'd for action now he takes the field,
And ſpeculation muſt to practice yield.
High on the ſtage, and graceful to the view,
" Adieu dear ſeat of bliſs, he cries adieu;"

Pathetic

Pathetic ſorrows in his boſom ſwell,
And with reluctant voice he ſighs a laſt farewell.

What means my trembling pulſe and throbbing breaſt?
Why is the ſcene to me ſo ſtrong expreſt?
Fancy again renews the awful rite;
Th' encircling audience ſwims before my ſight;
Once more my heart beats quick with anxious fear:
Once more methinks the ſolemn charge I hear—
" * Go forth my ſons, our firſt, our early pride,
" Thro' life's dark maze be virtue ſtill your guide;
" Without *religion*, *learning* is but vain,
" And fruitleſs toil philoſophy to gain:
" 'Tis not ſufficient that what's right you know,
" Your conduct ever ſhould your knowledge ſhow:
" Should injur'd freedom for aſſiſtance cry,
" Nor eye, nor ear, nor hand, nor heart deny;
" With pious zeal up raiſe her drooping head!
" There's nought but *vice* and *tyranny* to dread."
Bleſt inſtitution, nurſe of liberty!
My heart, my grateful heart, ſhall glow for thee:
No common pride I boaſt, no common joy,
That thy inſtructions did my youth employ.
Tho' not the *firſt* amongſt thy ſons I prove,
Yet well I feel I'm not the *laſt* in love.
Oh! may thy ſacred influence never ceaſe,
But in ſecure proſperity increaſe!

* This paſſage alludes to the charge delivered by the provoſt to firſt candidates for degrees in the college, amongſt whom the author was one.

It muſt be ſo, prophetic fancy cries;
See other *Newton's* other *Shakeſpeare's* riſe;
Each ſage philoſopher, each learn'd divine
And patriot worthies an illuſtrious line:
All thoſe who nobly fill Fame's ample page,
Again revive to grace a future age.—
Bleſt inſtitution! hail, methinks I ſee
The ſhining throng aſcribe their birth to *thee.*
Thou, *Schuylkill,* from whoſe cliffs I love to view,
Thy gurgling ſtream its rocky way purſue,
Shalt own the change: the ſavage yell no more
With fearful ſounds ſhall rend thy rugged ſhore:
Oh! let thy groves their richeſt beauties wear,
And for approaching happier times prepare.
Along thy banks the penſive bard ſhall ſtray;
Sweep the ſweet lyre, and wake the tuneful lay:
Echo ſhall love to catch the pleaſing ſound,
And bid it ſoften all thy rocks around:
Ev'n now thy flow'ry paths I ſee him tread,
And pluck thy laurels to adorn his head;
How ſhall thy waves elate flow proudly by,
And grow more turgid but to catch his eye?
How ſhall thy rural ſcenes bloom in his ſong,
And each romantic height his ſtrains prolong?
Then whilſt his breaſt with ſacred ardor burns,
Religion, Juſtice, Liberty by turns;
And ſcience too, in more harmonious ſtrains,
Shall ſweetly warble to the hills and plains:
Perhaps the bard, when higheſt noon prevails,
Beneath ſome ſhade ſhall court refreſhing gales;

And whilſt his wand'ring fancy roves more free,
May chance to think of earlier times and *me*.
Preſumptuous thought, ſhall my unpoliſh'd lay,
Be borne in ſafety down time's rapid way?
The dang'rous rocks of *criticiſm* fly,
And fearleſs paſs *Oblivion's* quick ſands by?
Enough for me, if with the leaſt regard,
The * friends of ſcience ſhould my ſong reward;
No ſpeedy death my artleſs ſtrains ſhall know,
Not without honour will my numbers flow,
If with indulgence, *they* ſhould not refuſe,
To ſmile propitious on my humble muſe.

* The truſtees of the college.

A Morn-

A MORNING HYMN.

ONCE more the riſing ſource of day,
Pours on the earth his genial ray:
Withdraws the ſtarry veil of night,
And ſmiles on ev'ry mountain height.

Once more my ſoul, thy ſong prepare,
Thy *God* approach in praiſe and pray'r;
With early voice ſalute the ſkies,
And on the lark's fleet pinions riſe.

This hand did me from danger keep
When nature lay entranc'd in ſleep:
When ev'ry ſenſe forſook its poſt,
And reaſon's guardian pow'r was loſt.

Soon as dark night o'er ſpreads the ſkies,
Colds miſts and drowſy damps ariſe:
Contagious ſteams their confines break,
And ſlumber o'er the ſluggiſh lake.

Loud ſhrieks the melancholy owl,
And prowling wolves thro' deſerts howl;
The fancied ſpectre glides the green,
And midnight murder walks unſeen.

Forlorn the wearied wand'rer ſtrays,
Loſt in a labyrinthian maze;
Where'er he treads, is danger there,
And his ſoul ſickens in deſpair.

Whilſt ſlumbers ſoft my eye-lids cloſe,
And golden dreams and ſweet repoſe,
Wear the ſad hours of night away,
And haſten on the chearful day.

My God! ſhall not ſuch goodneſs move
My ſoul to gratitude an love?
Or ſhall my heart forget to raiſe,
Her loud hoſannahs to thy praiſe?

When ſhall my eager ſpirit riſe,
And ſoar above theſe floating ſkies?
Oh! when with hoſts ſeraphic join,
To ſing thy majeſty divine?

In realms where no returns of night,
Shall e'er the tim'rous ſoul affright?
But one eternal blaze of day,
Shines forth with unremitting ray?

AN EVENING HYMN.

AT length the buſy day is done,
And yon bright orb, the glorious ſun,
Deep in the weſt reclines his head,
Where miſty curtains ſhroud his bed.

Oh! God of hoſts! with this day's cloſe,
How many ſleep in death's repoſe?
And with the ſinking ſun's decline,
To thee their fleeting ſouls reſign.

Hark! 'tis the tolling bell I hear,
And ſlow and dull it ſtrikes mine ear:
E'en whilſt I tune my penſive ſong,
The ſolemn fun'ral moves along.

He whom this night th' expecting tomb,
Shall wrap within its dreary gloom,
At yeſter-morn, devoid of care,
Up roſe and breath'd the healthful air.

Gay Hope o'er look'd the preſent day,
Proſpects of years before him lay;

He

He haſten'd to diſtant joys meet,
Nor ſaw the grave yawn at his feet.

Ambition, ſtop thy mad career,
Look on that corſe and drop a tear;
E'en when thy hand would graſp the prize,
The ſtroke is giv'n, and glory dies.

Let *Av'rice*, feeble, grey and old,
Whilſt his broad palm protects his gold,
Lift up his eyes, and ſighing ſay,
Death is a debt we all muſt pay.

Let thoughtleſs youth, too often found,
In *ſenſual joy's* enchanting round,
Behold, and as he trembling ſtands,
Let Pleaſure's cup fall from his hands.

And thou my ſoul thy thoughts employ,
On *God* thy glory, wealth and joy:
Virtue alone is ſtable here,
Nought but religion is ſincere.

When mortal pangs his frame ſhall ſeize,
And the chill'd blood begins to freeze;
When my fixt eyes muſt roll no more,
And life eſcapes thro' ev'ry pore.

Ah! what ſhall cheer my drooping heart.
Shall worldly honours joy impart?

Can ſenſual pleaſure ſweeten death,
Or wealth redeem one parting breath?

Therefore, my ſoul, thy thoughts employ,
On *God*, thy *Glory*, *wealth* and joy:
Virtue alone is ſtable here,
Nought but religion is ſincere.

To

TO ROSALINDA,

ON HER BIRTH DAY.

WELCOME! ye glories of the eaſtern ſky!
Bleſt be the dawn of this propitious day!
Oh! let the muſe her willing ſtrains employ,
And chearful ſwell the tributary lay.

This happy morn gave the rejoicing earth
A treaſure great as could the heav'ns beſtow,
This happy morn gave Roſalinda birth—
Ceaſe, ceaſe ye floods, ye tempeſts, ceaſe to blow.

Come gentle ſpring, like Roſalinda fair,
Like her advance, and brighten ev'ry ſcene:
Shed all thy odours in the ambient air,
And far abroad extend thy mantle green.

Like Roſalinda come, the ſource of joy!
Let nature ſmile, and all the world be gay:
Let ev'ry muſe her willing ſtrains employ,
To hail the ſpring, and Roſalinda's day.

TO

TO ROSALINDA,

ON HER BIRTH DAY.

HAIL! ſacred morn! the muſe's lay
Once more ſalutes thy riſing ray:
Hail! bleſſed morn! thy deathleſs fame
Shall live in Roſalinda's name.

Dark was the ſky, and thro' the night
The tempeſt wing'd its rapid flight;
The foreſt herds in caverns lay,
And look'd and long'd for light and day.

With glory crown'd, at length was ſeen
Thy happy dawn, mild and ſerene;
Diffuſive radiance paints thy ſky,
And gilds Norwedian hills with joy.

Then came with thee fair Roſalind;
And came, like thee, to bleſs mankind:
The ſtorms are huſh'd, the muſes ſing,
And ſoon aroſe the jocund ſpring.

The feather'd choirs from ev'ry tree,
My *Roſalinda*, welcome thee;

With them on this auſpicious day,
Oh! let me join my annual lay.

The morn gave luſtre to thy face,
The gentle ſpring, each winning grace;
Thus morn and ſpring their beauties join'd,
And gave the world fair *Roſalind.*

TO

TO ROSALINDA,

ON HER BIRTH DAY.

THE waſting tide ſlow ebbing from her ſhore,
Wave after wave reluctant forc'd away,
Down to her channel ſhrinks, as if no more
Old ocean would her borrow'd ſtream repay.

But ſoon the waters with impatient flow,
O'er the broad ſtrand in ſprightly murmurs glide;
From the green bank the ſedges ſtooping low,
With eager joy kiſs the returning tide.

But time his ever ebbing courſe purſues
Along eternity, that boundleſs ſhore;
No kind reflux the waſting ſtream renews;
The moment wave, once ſpent, recoils no more.

Life is a narrow ſpan contracting faſt;
And yet the anxious heart, or preſt with fear,
Would make it leſs, and wiſh the preſent paſt;
Or hope would bring ſome diſtant period near.

Time is the great deceiver of mankind,
Each day ſome long expected joy beguiles;

Each

Each day ſome new created hope we find,
Riſing to view, and ſtill the proſpect ſmiles.

This, gentle *Roſalinda*, is thy day,
And claims the annual tribute of my ſong:
Kindly accept the muſe's moral lay,
For moral ſubjects ſhould to thee belong.

Thrice happy they, who like thee, timely wiſe,
See years expire, and ſee without alarm;
To thee each birth day ſhall ſerenely riſe,
To fix ſome virtue, or improve ſome charm.

The glow of modeſty ſhall paint thy face;
Fair innocence, thy days with peace ſhall crown;
Gay wit ſhall heighten ev'ry ſprightly grace,
And mild religion lead thee gently on.

Till tir'd of life, thou ſhalt this life reſign,
And riſe a ſeraph from a ſleeping fair
To heav'n—where angels with their harps divine
Shall celebrate thy happier birth-day there.

EXTEMPORE VERSES

FROM THE TOP OF MOUNT PARNASSUS, A LOFTY HILL IN LANCASTER COUNTY.

ONCE more my heart dilates with joy,
To climb this craggy height;
To yonder diſtant hills once more
I ſtretch my raviſh'd ſight.

The known delight my boſom feels
Parnaſſian ground to tread;
And where the pureſt æther floats,
I'll raiſe my lofty head.

Fair *Roſalinda* ſtanding by,
Aſſiſts my flowing ſong,
And paſſing gales thro' waving groves,
Shall bear my ſtrains along.

She is my muſe, and doth my ſoul
With glowing thoughts inſpire:
Her cheering ſmiles ſhall make me feel
More than a poet's fire.

With anxious care, let others ſtrive
Uncertain bliſs to find,

And

And for expected wealth and fame
Reſign their peace of mind.

In ſome ſuch bleſt retreat as this,
Let me my hours employ,
And *Roſalinda* ſtill be near,
To brighten ev'ry joy.

DIRTILLA, A POEM.

THOU goddeſs ſable clad, *Dirtilla*, hail!
Thee I invoke to aid my daring muſe,
To riſe with ſooty wing and ſing thy praiſe.
Ne'er yet attempted by advent'rous bard.
Thee I invoke—whether thou lov'ſt to ſhew
Thy marbled viſage in the troubled pool,
Or ſpread'ſt thy bounty o'er the ſmutted face
Of chimney ſweeping elf; or o'er the plain,
Rolling in clouds by ſummer breezes born,
Saluſe the traveller in ſhape of duſt:
Whether in furnace or in noiſy forge,
With fiend-like colliers thou vouchſafeſt to dwell,
And fix with Vulcan thy co-equal reign;
Or ſoft recline upon a ſcullion's lap,
Or on the ſchool-boys jacket ſmile ſerene.

Rebellious beaux, and waſher-women ſtrive,
But ſtrive in vain with never ending war
To overcome thy pow'r—ſtill thou return'ſt,
And ſtill they labour on with fruitleſs toil,
Sworn foes to thee, thou ſober-viſag'd dame;
Not ſo thy bard—full well he knows to gain;
And having gain'd, thy favour ſtill to keep,
E'en now wide ſpreading o'er my honour'd coat

Full

Full many a ſpot, full many a greaſy ſmear,
Thy influence benign and pow'r declare;
Driving for thence, of new impreſſed cloth
The gawdy glare—ne'er to return again.

Oh! mortals blind to truth, whoſe anxious ſouls
Impatient wait, till from the taylor's hand,
The ſumptuous garb, long look'd for, comes complete.
Succeſs no ſooner crowns their wearied hope,
But, new diſtractions fill their troubled mind,
And cloud their joy; leſt, in ſome guardleſs hour,
A dreaded ſpot ſhould ſully all their pride.

See at the feſtive board in new brocade
And lawn, as yet unſtain'd, Sophronia ſits:
In vain rich wines of various ſort and hue,
In order rang'd, the glitt'ring ſide-boards grace;
And pleaſant viands ſmoke in vain around:
Nor theſe, nor yet th'exhilirating ſong,
Or needle point of ſtimulating wit,
Provoke to joy her ever anxious heart;
Should the rude ſervant with unhallow'd foot,
And overflowing glaſs, approach too near
The magic circle of her ſpreading robe:
Her eager hands collect the darling ſilk
In cloſer folds, and in her ſparkling eye
New lightnings kindle at the bold aſſault.

Thus have I ſeen within ſome farmer's yard,
Whilſt buſy Partlet for her chirping brood
The dunghill ſcratch'd; to them a mine of wealth:

Should fierce grimalkin from beneath the mow,
Or neighb'ring barn, creep ſly with deadly paw:
Alarm'd, ſhe gathers all her little train
Beneath her ſhelt'ring wings: ſhe ſwells with rage,
And briſt'ling feathers awe the daring foe.

Oh! goddeſs moſt benign, beneath thy ſway,
I eat and drink with pleaſure unallay'd;
Nor care I ought, if from the dripping ſpoon,
The falling drops enrich my ſullied garb:
Oh! could I like *Lunanius* boaſt thy love,
Thy fav'rite vot'ry *he*, far, far beyond
My utmoſt reach, my greateſt hope aſpires.
His honour'd chamber thou vouchſaf'ſt to make
Thy choſen ſeat, thy undiſturb'd abode;
Where never broom thy miniſters annoy,
But ſpiders, white with age, their webs extend
And ſee their num'rous offspring do the ſame.
Methinks I ſee him ſeated on the floor,
With all his dirty papers ſcatter'd round;
While lengthen'd cobwebs from the ceiling's height,
Hang pendant o'er his head in waving rows.
Not ſuch as Betty from the parlour ſweeps
With nimble hand: but ſuch as oft are found
In dungeons deep, black with the duſt of years.
Methinks I ſee upon his broken hearth,
On either ſide, a heap of aſhes riſe:
The ſad remains of a whole winter's fire:
Nor would he yield them to the chandler's pence.
For they, oh! curſed art; by dire proceſs,
Would ſoon convert them into cleanſing ſoap.

And

And here, a kettle ſtands, which never felt
The waſting torture of a ſcullion's hand;
Impenetrable cruſts guard it without,
And ſcale on ſcale the ſolid ſediment
Of conſtant uſe, uncleans'd, line it within;
And there a Delphin mug, emboſſed once
With many a winding leaf and op'ning flow'r,
Of which no traces now are to be found,
Obliterated all with harden'd grime.

But, above all, methinks I ſee his bed,
The throne, oh! goddeſs! where thou reign'ſt ſupreme;
The teſter bends beneath the load of duſt,
Which time hath ſcatter'd with unſparing hand,
And curtains, tawny, with inceſſant ſmoke,
Hang graceful round in many a ſmutted fold.
To ſhake the bed, or cleanſe the tott'ring frame,
On which it lies, no hand hath yet preſum'd;
But unmoleſted myriads wanton there.
Thus lives *Lunanius;* nor can ought avail
To move his firm allegiance unto thee,
And may'ſt thou, goddeſs, e'er ſuch vot'ries find.

Wrapt in prophetic viſion, I behold
The times approach, when all thy foes,
Humbled in duſt, ſhall own thy gen'ral ſway:
For well we know, that all things are but dirt—
And beaux and belles, and all the ſoapy train
Of waſhing-women, and of ſcouring men,
Muſt yield to thee, and into *duſt* return.

A SENTIMENT:

Occaſioned by a converſation with Mr. P—— M——, one of the principal men among the Chriſtian Society, called DUNKARS, at EPHRATA, in the province of PENNSYLVANIA.

THE Lord Supreme, from his exalted throne
Surveys at once earth, heav'n, and worlds unknown;
All things exiſting muſt before his eye
Like the plain tracings of a picture lie:
Unutter'd thoughts deep in the heart conceal'd,
In ſtrong expreſſion ſtand to him reveal'd.
Thouſands, and twice ten thouſands ev'ry day,
To him or feign'd or real homage pay:
Like clouds of incenſe rolling to the ſkies,
In various forms their ſupplications riſe;
Their various forms with him can nought avail,
The ſecret motives only will prevail;
And the true ſource of ev'ry offer'd pray'r,
To his all-ſearching eye muſt plain appear.

Some place religion on a throne ſuperb,
And deck with jewels her reſplendant garb:
Painting and ſculpture all their art diſplay,
And lofty tapers dart their lucid ray:
High on the full-ton'd organ's buoyant ſound,
The pleaſing anthem floats ſerenely round:

Harmonic

Harmonic ſtrains their thrilling pow'rs combine,
And lift the ſoul to ecſtacy divine.

Deep in *Ephrata*'s gloom *you* fix your ſeat,
And ſeek *religion* in the dark retreat:
In ſable weeds you dreſs the heav'n-born maid,
And place her penſive in the lonely ſhade:
Recluſe, unſocial *you*, your hours employ,
And fearful, baniſh ev'ry harmleſs joy.

Each may be right in their peculiar way,
If proper motives ſhould their worſhip ſway:
If but the *love divine of God* is there,
The ſpirit genuine of unfeigned pray'r;
'Tis true devotion; and the Lord of love
Such pray'rs and praiſes kindly will approve.
Whether from golden altars they ſhould riſe,
And wrapt in ſound, roll to the lofty ſkies,
Or from Ephrata's ſeat, ſo meek, ſo low,
The ſoft and ſilent aſpirations flow.

Oh! let the *Chriſtian* bleſs that glorious day,
When outward forms ſhall all be done away;
When we in ſpirit and in truth alone
Shall bend oh! God! before thy awful throne;
When thou our purer worſhip ſhalt approve,
And make returns of everlaſting love.

THE

THE TREATY; A POEM*,

Humbly inſcribed to the honourable THOMAS and RICHARD PENN, proprietors of the province of Pennſylvania.

'MID the deep murmur of luxuriant groves,
Waving o'er Lehigh's ſylvan painted ſtream,
All fancy-fir'd, the muſe retiring loves
Lonely to rove, wrapt in poetic theme.
Serpentine waters with majeſtic flow,
Now loſt—now ſhining, lead th' aſtoniſh'd eye,
To diſtant ſcenes where endleſs foreſts grow,
And duſky mountains melt into the ſky.
Guſhing abruptly from between the hills
Far off is heard the plunging torrent's roar;
From maſſy rocks here the cool ſtream diſtills,
And gentle daſhings ſound along the ſhore.
The gay muſicians of the groves around,
In cadence ſweet attune their warbling ſong;
Their warbling ſong the darkſome caves reſound,
And light-wing'd breezes bear the ſtrains along.

Here

* This poem was written upon the banks of the river Lehigh, in the year 1761, when the author ſerved as ſecretary in a ſolemn conference held between the government of Pennſylvania and the chiefs of ſeveral Indian nations.

Here never bard hath ſwell'd th' harmonic lay,
Then let me eager to the bliſs aſpire
The firſt, ye rocks! to hear your echoes play,
Your virgin echoes to the dulcet lyre.

For thee, illuſtrious Penn! my ſong I raiſe,
Oh! let the muſe thy wonted favour claim:
For thee I lonely tread the ruſtling maze,
And bid *thy* woods reſound their maſter's name.

With rigid ſway too long hath ign'rance reign'd,
And ſpread her gloom o'er this benighted land:
Theſe ſolemn groves too oft with blood been ſtain'd,
Shed by barbarian's unrelenting hand.
Witneſs, ye ghoſts! that to the waining moon,
Join, with the owl, ſhrill ſhrieks and plaintive moan;
Witneſs ye innocents, by fate too ſoon
Condemn'd beneath a ſavage yoke to groan
—Here pauſe a-while!—theſe graſs-grown ruins view,
They call attention; they implore a tear!
Theſe once the ſound of ſocial converſe knew,
And peace, content, and jollity were here.
Alas! how chang'd! the hoſpitable hearth
No more ſhall blaze to cheer the ev'ning friend:
No more inſpire the roar of ruſtic mirth,
When, with the ſetting day, its labours end.—
Alas! how chang'd! what a confuſed maſs,
The ſcatter'd ruins of the cottage lie!
Here hiſſing ſerpents ſlide along the graſs,
And here the owl lifts her diſtreſsful cry.
As calm and ſtill the peaceful houſehold lay,
At dead of night a ſavage yell was heard;

Affrighted

Affright'd ſleep wing'd her aerial way,
And death in horror's darkeſt robe appear'd.
Warm from the father's wound the reeking blade
With mortal point hangs o'er the mother's breaſt:
Vain are her cries, her loudeſt cries for aid;
She groans in agony and ſinks to reſt.
A fate more hard the little offspring know;
Thro' breaks and thorns they tread their weary way;
Their guides, upitying, urge their ſteps, too ſlow;
And chide them oft as thro' the wild they ſtray.

How ſhall the muſe, oh! thou ill-fated fair!
In numbers equal to thy weight of woe,
Thy ſad diſtreſs, thy lot ſevere declare,
And bid for thee the tears of pity flow!

Roſetta, faireſt maid that grac'd the plains,
Of all the village long remain'd the boaſt,
Struck with her lovely form contending ſwains,
Were daily ſtriving who ſhould pleaſe her moſt:
But happy *Doris*, with his gentle mien,
Had won her heart, the ſoft relenting fair,
Oft met her faithful ſhepherd on the green,
And *Doris* breath'd his tender paſſion there:
One eve, *Roſetta* from the cottage ſtray'd,
To ſeek a wand'ring lambkin of her fold,
A mercileſs troop ſeiz'd the unwary maid,
And graſp'd her, trembling, in their ſavage hold.
Full of fond hopes as Doris paſſing by,
Purſued his way, contemplative and ſlow,
Amaz'd he heard his fair one's well known cry,
And, fearleſs, ruſh'd upon the num'rous foe;

Long

Long did the youth th' unequal fight maintain;
But what, alas! could valour then avail?
An *Alexander* muſt have ſtrove in vain,
Superior force and numbers will prevail.
The captive lovers lock'd in cloſe embrace,
With ſilent tears their mutual grief expreſs:
The tawny victors haſte to leave the place,
Unmov'd, unpitying of their ſad diſtreſs.
Two parties form'd, one takes the weeping fair,
The other *Doris* for their eaſy prize;
A ſilent gloom ſhuts in *his* dark deſpair;
The woods re-echo to her mournful cries.

Six times the moon her fulleſt orb had ſhown,
Since ſad *Roſetta* with inceſſant grief,
Had mourn'd her liberty and lover gone,
Without one cheering proſpect of relief,
Forc'd from her hoſpitable home to ſtray,
O'r craggy rocks her tender feet muſt go;
Thro' the ſharp thorns ſhe makes her gloomy way
And bears about a conſtant load of woe.
Oft times when ſhiv'ring in th' inclement air,
On the damp ground ſhe ſought for loſt repoſe;
Her mother's fondneſs and her father's care,
And *Doris's* love to ſad remembrance roſe.

At length the chiefs a ſolemn feaſt prepare,
And gather num'rous from the nations round;
Each brings his ſpoils of war, and pris'ners there,
And thro' the woods triumphant echoes ſound.

A hor-

A horrid tragedy muſt now ſucceed,
My ſwelling heart beats quick within my breaſt;
How ſhall the ſympathiſing muſe proceed
To dip her hand in blood, and paint the reſt?
Six tawny heroes in their battles ſlain,
Sully the luſtre of their feſtive day;
For them ſix captives with tormenting pain,
Muſt yield their lives the fatal debt to pay.

Abſorb'd in ſorrow on a turf reclin'd!
Roſetta lay, all wan with waſting grief;
Her lot ſevere, ſhe ponder'd in her mind,
And look'd from death alone to find relief—
She ſtarts alarmed at a ſudden cry,
The well known voice of *Doris* ſtrikes her ear;
Half-rais'd ſhe looks around with tearful eye,
To ſee if much lov'd *Doris* was not near:
Oh! mournful object for a ſoul diſtreſt!
Faſt to a tree ſhe ſees her ſhepherd bound:
A mortal arrow planted at his breaſt,
And his life bubbling from the recent wound!
Struck with an inſtant frenzy of deſpair,
Thro' all her frame ſhe feels the chill of death;
Flies to her juſt expiring love, and there
Sinks at his feet with cloſing eyes, and ſighs her lateſt breath.

But ceaſe my muſe, ſuch tragic ſcenes no more,
From pity's eye ſhall draw the tender tear;
Heav'n ſhall our interrupted peace reſtore,
And with the danger baniſh all the fear.

All

All hail! the dawn of more enlighten'd days!
Accept, great *Penn*, the praiſe to merit due;
The angel peace, her olive wreath diſplays,
And ſmiling, as ſhe riſes, points to you.

When the fam'd *Cortes* to his monarch gave
Another empire in a diſtant land,
He bore his thunders thro' the foaming wave,
And fatal ſteel gleam'd dreadful in his hand.
Nor pity mov'd, nor juſtice ſway'd his breaſt;
To fraud or force the injur'd natives yield;
Low in the duſt he treads the warrior's creſt,
And ſtands triumphant in a bloody field.

Not ſo the gentler patron of diſtreſs,
By lawleſs force would large poſſeſſions gain:
Illuſtrious *Penn!* ſtill be it thine to bleſs,
Not to inflict unneceſſary pain.
Thine is the ſkill in ſoft encircling chains
Of juſtice, truth, and charity to bind
The hand that ſpreads deſtruction round the plains,
And quell the fierceneſs of th'untutor'd mind:
From lofty mountains, and from valleys low,
From the broad lakes, and plains, that wide extend,
From ev'ry quarter whence the winds can blow,
Some of their tribes the various nations ſend.
But moſt from where *Ohio*'s waters roll
To Lehigh's lucid ſtream, the chiefs repair;
Led by the glitt'ring centre of the pole,
To meet in love their Chriſtian brethren there.
In yonder bow'r behold the council meet,

Solemn

Solemn and grand, without the help of art;
Of juſtice, commerce, peace, and love, they treat,
Whilſt eloquence unlabour'd ſpeaks the heart.
See from the throng a painted warrior riſe,
A ſavage *Cicero*, erect he ſtands,
Awful, he throws around his piercing eyes,
Whilſt native dignity reſpect commands.
High o'er his brow wantons a plumed creſt,
The deep vermilion on his viſage glows,
A ſilver moon beams placid round his breaſt,
And a looſe garment from his ſhoulders flows.
One nervous arm he holds to naked view,
The chequer'd wampum glitt'ring in his hand;
His ſpeech doth all the attic fire renew,
And nature dictates the ſublime and grand.
Untouch'd by art, e'en in the ſavage breaſt,
With native luſtre, how doth reaſon ſhine!
Science ne'er taught him how to argue beſt,
The ſchools ne'er ſtrove his language to refine.
What noble thoughts, what noble actions riſe
From in-born genius, unreſtrain'd and free?
A tinctur'd medium oft deceives our eyes,
And art ſhould prune, but not diſtort the tree,
E'en thoſe who much their tutor'd reaſon boaſt,
And in the ſacred ſeats of learning dwell;
Too oft obſcure the paths of virtue moſt,
And only ſtudy how to puzzle well.
Why let the ſtream thro' levell'd parterres glide
Its lazy courſe to marble bounds confin'd;
Give me the bubbling fountain's moſſy ſide,
In contemplation ſweet to lull my mind.

From

From nature's ſtore the warrior's ſpeech is dreſt,
More pure the council fire begins to glow:
He bids the brighten'd chain of friendſhip laſt,
Long as the ſun ſhall burn or waters flow.
Their mutual faith by firm aſſurance bound,
The chiefs, well pleas'd from ſolemn treaty riſe,
Their brethren's bounty richly ſpreads the ground
And they with grateful joy divide the prize.
How fair is charity, celeſtial maid!
And this is charity ſincere indeed,
To ſee our foes with tend'reſt care repaid,
To cloth the naked and the hungry feed.

Now o'er the plain the ſwarthy heroes bring
A num'rous tribe, deviſing paſtimes gay:
With ſportive ſhouts they make the mountains ring,
And with athletic feats conclude the day.
Some with looſe treſſes floating in the wind,
In the ſwift race for victory contend;
A fierce ambition fires each youthful mind:
They ſtrain each ſinew, ev'ry limb extend.
To ſmite the ball, ſome wield the maſſy oak,
And ſend it hiſſing, bounding o'er the plain;
Till counter-check'd by repercuſſive ſtroke,
Swift the elaſtic ball returns again.
Their nicer ſkill the dext'rous archers try,
And eager ſtrive for victory and fame;
From the tough bow the feather'd arrows fly,
And pierce the centre of their diſtant aim.
No keener joy the youths of *Greece* inſpir'd,
No brighter glories kindled in their eyes;

When

When they preſs'd forward with ambition fir'd
To win and claim the fair *Olympic* prize.

Now palid veſper mourns departing day,
The frequent tears that trickle from her eye,
Fall brilliant ſtars, and mark her ſpangled way,
O'er the vaſt concave of the duſky ſky:
And now the chiefs for awful rites prepare,
And hand in hand in horrid rounds unite,
Where curling blazes laſh the miſty air,
And pierce their radiance thro' the gloom of night,
—The dance of war begins, their eye-balls roll,
And dart their fierce enraged glances round;
More than infernal madneſs fills the ſoul,
And diſtant rocks their fearful yells reſound.

No greater frenzy e'er the prieſteſs ſhook,
When on the ſacred tripod mounted high,
Her tender, ſhiv'ring, panting frame was ſtruck
With the rough preſence of the deity.
Each viſage now convulſed looks aghaſt,
Their limbs are all in rude contortions thrown,
Their wild enthuſiaſm heightens faſt,
And they for devils, not for men are known:
Till waſted nature can no more ſuſtain,
And down in ſleep their wearied bodies fall;
Silence profound reſumes her awful reign,
And midnight's thickeſt mantle covers all.

A N E L E G Y

SACRED TO THE MEMORY OF

MRS. A N N G R Æ M E,

AND HUMBLY INSCRIBED TO

MRS. ANN STEDMAN AND MISS ELIZA GRÆME,

SURVIVING DAUGHTERS OF THE DECEASED:

As a teſtimony of his ſincere affection and regard by their much obliged Friend,

FRANCIS HOPKINSON.

"*I heard a voice from Heaven, ſaying unto me, Write, from henceforth, bleſſed are the dead which die in the Lord, Even ſo ſaith the ſpirit: for they reſt from their labours.*"—Rev. xiv. 13.

WHY move the marble jaws of yonder tomb?
Why gleams the day light on her ſacred gloom?
Why doth ſhe thus her dark abode prepare?
And what new gueſt is ſoon expected there?
Oh! ſee ſhe comes; amidſt a weeping throng,
In ſolemn pomp Monimia's born along:

Monima's breaſt hath heav'd its lateſt groan,
And duſt and aſhes claim her as their own—
Away falſe world—away, from reaſon's eye ;
All trifling objects, vain ideas fly !
More awful ſcenes are preſent to my view,
And in my boſom leave no room for you.
The drooping pall ; the bell's ſlow ſullen ſound ;
The gaping grave ; the weeping friends around ;
By ſacred prieſts the ſolemn ſervice read ;
Monimia number'd with the ſilent dead.
Theſe, theſe are ſerious ſubjects, and I find
My ſoul to ſerious ſentiments inclin'd,

Monimia's gone ! up to the lofty ſkies
Methinks I ſee her ſainted ſpirit riſe ;
Methinks I hear her voice triumphant ſing,
" *Grave* where's thy victory ? *Death* where's thy ſting ?

Say ſhall we mourn becauſe her conflict's o'er ?
Say, ſhall we weep, becauſe ſhe weeps no more ?
Before the fullneſs of the Chriſtian's joy,
Death muſt this tranſitory frame deſtroy;
Earth muſt to earth, the ſpirit to her flight,
For with its parent ſource ſhall each unite.

Full of deſires unſatisfied thro' life,
The anxious ſoul maintains continual ſtrife :
Faſt lock'd in clay, amid ſurrounding foes,
She pants and longs for freedom and repoſe.
With beck'ning hand, and a deceitful ſmile,
Here ſtands temptation ready to beguile :

Who

With gloomy aſpect, there a fearful train,
Of poignant ſorrows and diſtracting pain:
And laſt of all, comes her tremendous foe,
The king of terror ſtrikes the fatal blow;
The heart grows ſick, unequal throbs expreſs,
Nature's laſt labour, and extreme diſtreſs:
Oh! who can tell the agonizing throws;
When the lips tremble and the eye-lids cloſe;
When the ſoul, ſtruggling in another birth,
Strives to get looſen'd from encumb'ring earth,
When Horror's blackeſt midnight would prevail,
And all the help the world can give muſt fail;
Whilſt the cold ſweat oozes thro' ev'ry pore,
Till ſuffering nature can endure no more.

Oh! What is life, and all this life can give,
We taſte, but not enjoy; we breath, not live!
True joy and real life are fixt above,
The only objects worthy of our love:
Lament not then, that lov'd *Monimia's* gone,
Her time of trial's paſt, her work is done;
Her hope did firmly on her God depend,
She ſtood Chriſt's faithful ſoldier to the end,
And ſhall that crown of victory obtain,
Which ſaints expect, and martyrs died to gain.

Not to this period were her views confin'd,
A proſpect nobler far engag'd her mind;
Array'd in immortality to ſtand,
Beyond the reach of time at God's right-hand;
To lift her voice with ecſtacy divine;
And join the ſong where ſhining myriads join,

Till Heav'n itſelf feels the prevailing ſound,
And everlaſting kingdoms tremble round:
To view his glory with undazzled eye,
Who for his carpet ſpread yon glitt'ring ſky;
Who from his throne looks downward to behold,
Worlds glide o'er worlds, ſyſtems o'er ſyſtems roll'd;
To ſtretch the wings of thought from place to place,
Pierce the dark regions of unbounded ſpace;
In full fruition ev'ry hope deſtroy,
And drop belief to graſp the real joy.
Such were the objects of her ſouls deſire;
Theſe did each virtue, ev'ry grace inſpire,
The word of truth, her ſtill unerring guide,
Faith, Hope, and Chriſtian charity, ſupplied:
A noble fortitude, falſe fear diſarm'd,
A ſteady piety her boſom warm'd;
She liv'd a bright example to mankind:
Peaceful ſhe died, contented and reſign'd.

Oh! may I ſtrive her fooſteps to purſue,
And keep the Chriſtian's glorious prize in view:
Like her defy the ſtormy waves of life,
And with heroic zeal maintain the ſtrife:
Like her find comfort in the arms of death,
And in a peaceful calm reſign my breath.

Græme Park July 1765.

VERSES

Wrote in a blank book which once belonged to Mr. *Shenſtone* the poet, and was given by the *Lord Biſhop of Worceſter.*

COME little book, the giver's hand,
Shall add ſuch worth to mine,
That I will hold thee highly priz'd,
And joy to call the mine.

Come little book; nor in my care,
An humbler lot refuſe,
Tho' Worceſter own'd thee once, tho' once
Deſign'd for *Shenſtone's* muſe.

Had *Shenſtone* in thy ſpotleſs page
In glowing numbers plac'd,
All that is pleaſing great, and, good,
With ev'ry virtue grac'd:

Fill'd thee with gentleneſs and love,
With piety and truth;
The wiſdom of experienc'd years,
The brilliant powers of youth;

With

With all the condeſcending eaſe
  Of manners moſt refin'd,
Then hadſt thou been an emblem fit,
  Of *Worceſter's* generous mind.

Come little book; and let me boaſt
  No ſmall, no common fame,
That in thy once ſo honour'd page,
  I write my humble name.

Hartlebury Caſtle, in Worceſterſhire, 1767.

TO A VERY YOUNG LADY.

So young, ſo ſkilful, and ſo fair!
Such praiſe thy merits claim,
The muſe with rapture ſhould prepare,
To celebrate thy fame.

If thus thy morn of youth diſplays
So much of virtue's light;
Oh! who can tell the glorious blaze
Of life's meridian height?

Gay hope with joy to future years,
Extends her eager view;
A pleaſing proſpect there appears,
She ſmiles, and points to you.

Thro' life ſhe ſees thee take thy way,
Elate in beauty's pride.
The graces all around thee play,
And virtue is thy guide.

Fair

Fair innocence with peace and love,
  Strew flow'rs where e'er you tread;
And mild religion from above,
  Sheds bleſſings on thy head:

Then ſhall thy worth ſome bard inſpire,
  In more exalted lays,
To bid the gazing world admire,
  And give thee all thy praiſe.

London, 1767.

AN ODE

Set to Muſic on Mrs. B——'s Birth Day.

RECITATIVE.

WHEN *Cæſar's* birth-day glads Britannia's iſle,
The earth exults and nature ſeems to ſmile:
Th' uplifted trumpet's awful ſound,
United acclamations round,
And thund'ring cannon's awful roar,
Shake with rude tranſport *Albion's* ſhore.

AIR.

But in more ſoft and pleaſing lays
Let us our joy diſplay;
Oh! ſwell the tend'reſt note of praiſe
To hail *Eliza's* day.

For with fair truth and love divine,
Her peaceful ſoul is bleſt;
And all the winning virtues ſhine
Serenely in her breaſt.

Like

Like ſome pure placid ſtream that flows
Gently and free from ſtain,
Diſpenſing bleſſings as it goes,
Along the flowry'ry plain:

So ſhe thro' life her equal way
Glides on with ſpotleſs name:
Oh! may this oft returning day
Encreaſe her modeſt fame!

Hartlebury Caſtle, 1766.

The

* THE HUMBLE PETITION

Of the *Docks*, *thiſtles*, and *nettles* of Hartlebury Farm, to the Lord Biſhop of Worceſter.

ILLUSTRIOUS Worceſter; let thy patient ear,
Receive our ſorrows, and with pity hear;
Oh! haſte, and ſhield with thy protecting hand
The *thiſtles*, *docks*, and *nettles* of this land.

There was a time when our increaſing race,
Had long in calm poſſeſſion held this place:
See yon fair park, thoſe blooming gardens ſee,
Beſide each ſtream, and underneath each tree,
We rear'd our lofty creſt, and all around,
With unmoleſted foilage ſpread the ground;
Thoſe days of peace, alas! are now no more:
Who ſhall to us thoſe days of peace reſtore?
Our num'rous race deſtroy'd, our empire loſt;
Nor garden, park, nor ſtream, nor ſhade we boaſt;

Up

* Theſe lines were occaſioned by Mrs. I—---'s, my Lord's ſiſter, rooting out the thiſtles, &c. from the gardens, walks, and park with uncommon induſtry and care.

Up roſe our foe, with unrelenting hand,
And fatal ſteel, to root us from the land ;
Amongſt our tribes deſtruction marks her way,
To us 'tis mortal, but to her 'tis play;
None, none eſcape ! young, old, and ſhort and tall,
Before her powerful arm unpitied fall ;
Docks, *thiſtles*, *nettles* round her mangled lie,
And in one common heap of ruin die.

In vain, we thiſtles, our high lineage bring,
From ancient thrones ; the pride of Scotland's king ;
Ah ! what avails ! that born thro' war's alarms,
Our ſacred flow'r grac'd Caledonia's arms ;
Wav'd in her banner, glitter'd on her ſhield,
And ſpur'd her heroe to the martial field ;
In vain we claim a kingdom for our own,
Or boaſt that now we deck the Britiſh throne.

Soon as from earth we ſpring erect and gay,
And ſpread our purple taſſels to the day ;
With fatal ſteel her hands our ſtalks divide,
And to the duſt bring down our with'ring pride.
And yet, oh ! ſtrange to tell ! the courteous fair,
To all around, extends her nurſing care ;
With placid ſmiles and with benignant mind,
To other's gentle, but to us unkind:
Oh ! ſay what dire offence hath caus'd our woe,
And made that breaſt, where pity dwells, a foe ?
Or rather ſay, what can our ſtate reſtore,
And ſooth her rage that ſhe deſtroy no more.

Nor

Nor her alone we fear *, a hoſtile hand,
O'er the ſeas wafted from a diſtant land,
Pours dire deſtruction on our harmleſs race,
And fills with heaps of ſlaughter ev'ry place.

When weſtern breezes with a murm'ring ſound
Shook the ſmall leaf and wav'd the groves around,
We little thought the ſoft and pleaſing gale,
Fill'd for our mortal foe the ſwelling ſale:
Unwelcome gueſt! thy coming we deplore,
And wiſh thee back upon thy native ſhore.
Are there no *thiſtles* there thy hands t'employ?
Are there no *docks* or nettles to deſtroy?
But muſt we fall, and whilſt we ſue in vain,
Be lopt and left to languiſh on the plain?

In vain hath nature with indulgent care,
On wings of down high pois'd our ſeed in air,
And bid the winds the little treaſures bear;
For in their cells, e'er they're learnt to fly,
Cut off, unfledg'd the ſeeds prolific die.
In this diſtreſs on thee, our Lord we call;
Save us from ruin, e'er we periſh all!
Oh! *great* and *good* to mercy ſtill inclin'd,
Let this our pray'r with thee acceptance find.

Small our requeſt—not where thy harveſts glow,
Do we deſire, or would preſume to grow;

In

* The author.

In humble ſtate beneath each hedge to ſtand,
Is all we aſk from thy benignant hand.
So ſhall our tribes exult in harmleſs joy,
Nor e'er with pointed ſting thy hands annoy;
But thro' theſe fields we'll celebrate thy fame,
And thiſtles yet unſown ſhall bleſs great Worceſter's name.

Hartlebury Caſtle, 1766.

To MYRTILLA.

WITH ſprightly air, and graceful mien,
Eaſy and ever gay;
Myrtilla trips along the green,
And ſteals all hearts away.

Good-humour ſmiling in her face,
Seems ſorrow to defy;
Wit lights up ev'ry ſprightly grace,
And ſparkles in in her eye.

Fair is her form, her ſpotleſs mind
With ev'ry virtue bleſt;
And no offence could ever find
A harbour in her breaſt.

Ye ſwains, with caution paſs this way;
For ſhould you meet the fair,
You muſt to beauty fall a prey;
Love would your hearts enſnare.

Hartlebury Caſtle, 1766.

TO MYRTILLA.

SOON *Myrtilla* muſt thy friend,
Haſten to a diſtant ſhore ;
May propitious gales attend,
May they waft him ſafely o'er !

When to penſive joys inclin'd,
Thro' my native groves I ſtray,
Thy dear image to my mind
Soothing pleaſures ſhall convey.

Fancy, oft, in airy flight,
Will direct her courſe to you ;
Bringing ſcenes of paſt delight
Back to my enraptur'd view.

Oft ſhall *Schuylkill's* rocky ſhore,
With her waving woods around,
Thy fond name, repeating o'er,
Strive to ſwell the pleaſing ſound.

Thus with friendſhip moſt ſincere,
Shall my faithful boſom glow ;

All

All thy virtues I'll revere,
With ſuch love as angels know.

Hoping ſtill tho' far from thee,
I've a place in thy regard;
Which delightful thought ſhall be
My firm conſtancy's reward.

AN EVENING AT SEA.

MORE pleaſing far, than all the glare of day,
The evening mild invites the muſe's lay.
Our gallant ſhip, with ev'ry turgid ſail,
Glides ſmoothly on before the preſſing gale:
Whilſt the full moon, fair regent of the night,
Pours o'er the ſea a flood of ſilver light:
No noiſe is heard except the pleaſing ſound,
Of waves that roll and ſwell and break around;
Ever reſponſive to the watchman's ſong,
Who treads the deck, and trills his ditties long
With voice melodious, and with heart ſo true,
To lovely *Nancy*, or to black ey'd *Sue*.

Far on a diſtant ſhore, with curious eye,
Our anxious friends conſult th' uncertain ſky;
Longing they look, and with impatience burn,
To ſee in ſafety our tall bark return.

On that bleſt period we with no leſs joy,
Our eager hopes our conſtant thoughts employ.
Haſte happy day! when with ſincere delight
Our hands ſhall join; and ſocial hearts unite.

Pennſylvania Packet,
1766.

VERSES

Wrote near the Concluſion of a very tedious Voyage.

HAIL to the near approach at laſt,
Of that long look'd for day!
When hope enjoy'd, and dangers paſt,
Shall former cares repay.

The happy hour is now at hand,
When we ſhall wiſh no more,
But with exulting pleaſure ſtand
Firm on our native ſhore.

Let ocean ſwell his angry wave;
Let winter blaſts ariſe;
Their fury we no more will brave,
Nor truſt uncertain ſkies.

But in ſecure and calm delight
Our peaceful hours employ;
And crown revolving day and night,
With ev'ry ſocial joy.

Thus the *good man* with tranquil mind
At cloſe of life's career,

Goes chearful on, in hopes to find
A happy harbour near.

Nor would he tempt thoſe ſtorms again,
Which ſhook his virtuous breaſt;
But, well rememb'ring former pain,
Contented to ſinks to reſt.

TO DELIA,

WROTE ON A LEAF IN HER POCKET-BOOK.

GO little leaf, and to the fair,
The miſtreſs of my heart;
My truth and conſtancy declare,
My ardent love impart.

But how ſhall thy ſmall page contain
That which no bounds controul?
Or how ſhall feeble words explain
The tranſports of the ſoul?

Go, tell her then that nothing leſs
Than a whole life of love,
Can all my joy in her expreſs,
Can my fix'd paſſion prove.

That nought but death can from my mind,
Her dear idea part,
And lovely *Delia* ne'er ſhall find
A rival in my heart.

Go, tell her all our peaceful years
In mutual bliſs we'll ſpend;
And hope to meet beyond the ſpheres,
When this frail life ſhall end.

May, 1768.

SONG.

SONG.

SOFT ideas love inſpiring,
Ev'ry placid joy unite;
Ev'ry anxious thought retiring,
Fill my boſom with delight.

Soft ideas, gently flowing,
On your tide, ſo calm and ſtill;
Bear me, where ſweet zephyrs blowing,
Wave the pines on *Borden's-Hill* *.

Where the breezes odours bringing,
Fill the grove with murm'ring ſound;
Where ſhrill notes of birds ſweet ſinging,
Echo to the hills around.

To the pleaſing gloom convey me,
Let my *Delia* too be there;
On her gentle boſom lay me,
On her boſom ſoft and fair.

Whilſt

* At Bordentown on Delaware.

Whilſt I there, with rapture burning,
All my joy in her expreſs
Let her love for love returning,
Me with fond careſſes bleſs.

On his little wings deſcending,
Bring the god of ſoft delight:
Hymen too with torch attending,
Muſt our hands and hearts unite.

She the ſource of all my pleaſure
Shall my breaſt with tranſport fill:
Delia is my ſoul's beſt treaſure,
Delia, pride of *Borden's-Hill.*

July, 1768.

THE

TO MYRTILLA.

THE NEST.

AS in the glowing noon of day,
Stretch'd careleſs on the ground,
Beneath the breezy pines I lay,
Lull'd by their murm'ring ſound:

A little neſt aloft I ſpy'd,
Of feathers white as ſnow,
With ſtrong, tho' ſlender, cordage ty'd
Faſt to the top-moſt bough.

With eager haſte I ſeiz'd the prize,
And found a beauteous pair:
Love yet unfledg'd with *friendſhip lies*,
Together neſtling there.

Delia my captive, love detains
In Hymen's ſilken clue;
Friendſhip, *Myrtilla*, yet remains
An off'ring fit for you.

THE

THE WASP.

WRAPT in Aurelian filth and ſlime,
An infant waſp neglected lay;
Till having doz'd the deſtin'd time,
He woke, and ſtruggl'd into day.

Proud of his venom bag and ſting,
And big with ſelf-approved worth:
Mankind, he ſaid, and ſtretch'd his wing,
Should tremble when I ſally forth.

In copious ſtreams my ſpleen ſhall flow,
And ſatire all her purſes drain;
A critic born, the world ſhall know
I carry not a ſting in vain.

This ſaid, from native cell of clay,
Elate he roſe in airy flight;
Thence to the city chang'd his way,
And on a ſteeple chanc'd to light.

Ye gods, he cry'd, what horrid pile
Preſumes to rear its head ſo high—

This clumſy cornice—ſee how vile :
  Can this delight a critic's eye ?

With pois'nous ſting he ſtrove to wound
  The ſubſtance firm : but ſtrove in vain ;
Surpriſ'd he ſees it ſtands its ground,
  Nor ſtarts thro' fear, nor writhes with pain.

Away th' enraged inſect flew ;
  But ſoon with aggravated pow'r,
Againſt the walls his body threw,
  And hop'd to ſhake the lofty tow'r.

Firm fix'd it ſtands ; as ſtand it muſt,
  Nor heeds the waſp's unpitied fall :
The humbled *critic* rolls in duſt,
  So ſtunn'd, ſo bruis'd, he ſcarce can crawl.

TO

TO T—— M——, ESQ.

AS I ſat by the fire, the newſpaper read,
And waited for breakfaſt, my wife being in bed;
It came in my mind that I could not do better
Than to call for ſome paper, and write you a letter.
'Tis true I have nothing material to ſay,
But will mention what incidents fell in my way;
Our leaving *Newcaſtle*, and how we got hither,
Half tir'd to death, thro' wind and foul weather.
I mounted at nine, and ſet off on my journey,
Along with my brother-in-law the attorney;
Who took with him papers, ſo many and bulkly,
He found it convenient to ride in his ſulky.
We travell'd, and chatted, and made ourſelves merry,
And who ſhould we meet a few miles from the ferry,
But the *great little man*: the juſtice I mean,
Rever'd and belov'd by the ſwains of *Chriſteen*.
You know that at preſent, however, he labours
Beneath a ſad quarrel with one of his neighbours;
And then to *Newcaſtle* was going to ſhow
What homage the vulgar to juſtices owe.
He ſtopp'd us, and while we ſtood ſtill in our places,
Related his ſtory, and cited ſome caſes,
To prove how exceeding important the truſt is,
And what veneration is due to a juſtice.

My brother aſſented, or ſeem'd to aſſent,
To all that was urg'd—away then he went,
Whilſt we on our journey purſued as before,
Till we came to the ferryman's houſe on the ſhore.
Now this ferryman happen'd to be the vile brute
Who affronted his worſhip, and rais'd this diſpute:
He likewiſe related his caſe to the lawyer
In ſuch agitation, he work'd like a ſawyer;
Whilſt I ſtood impatient, unable to ſtir,
For his ſtory was tedious, and caus'd a demur:
At length I exclaim'd—as I am a ſinner,
We've no time to loſe, we ſhall miſs of our dinner:
But the man fully bent to wipe off his attainder,
Stept into the boat, and there told the remainder;
The lawyer aſſented, or ſeem'd to aſſent,
To all that was ſaid—then forward we went.
Nothing afterwards happened that's worthy relating,
Till arrived at *Cheſter*, the place of our bating;
And here we divided, as was our intent;
At *Cowpland*'s he ſtopt, and to *Withy*'s I went:
Here the rooms were all full—nought but buſtle and rout,
And over-grown booby-heads ſtalking about;
For this was the time when the lawyers reſort,
From all quarters round to attend *Cheſter* court:
Attornies and clients here lovingly meet,
The one to be cheated, the other to cheat.

Now dapper lawyers croud each ſtreet,
Dreſt fine to cut a daſh;
Saluting ev'ry one they meet,
In hopes of getting caſh.

How

How doſt thou friend, 'twould give me joy
To ſerve you with my ſkill;
For if you pleaſe, I can deſtroy,
Or can confirm a will.

Say, has your neighbour's deed a flaw?
Your title got a wound?
The breach I'll widen by the law,
By law will make your's ſound.

" A widow, ſir, there is oppreſt,
" And by a wealthy knave;
" Oh! then aſſiſt the poor diſtreſt,
" Her all from ruin ſave;

" Her thanks and pray'rs ſhe'll freely give,
" 'Tis all you can obtain;
" For ſhe hath ſcarce enough to live,
" And children to maintain."

" Her caſe is bad—I can't defend her—
" Go tell her ſo from me;
" Beſides, my conſcience is too tender
" To plead without a fee.

" Sir, ſir," cries another, " you're gen'rous indeed,
" For the preſent, I think myſelf very well fe'ed:
" By what you have ſaid, I can plainly diſcover;
" If you bring an ejectment you'll ſurely recover;
" The law is as plain as the noſe on your face;
" I remember lord *Raymond* has juſt ſuch a caſe,

And

" And what tho' the tenant hath long held the land,
" I warrant we'll ſoon wreſt it out of his hand;
" And therefore I think you may ſafely depend on't,
" In a very few years we ſhall ouſt the defendant."

Quite tir'd of nonſenſe, and noiſy diſcourſe,
I ſwallow'd my dinner, and mounted my horſe:
But ſcarce had proceeded a mile on my way,
Before it turn'd out a very foul day;
The wind and the rain met me full in the face,
Yet I travell'd along at a pretty round pace;
Tho' I button'd up cloſe, and flapp'd down my hat,
I was wet to the ſkin, like an half-drowned rat.
At length I got home, well pleas'd you may gueſs,
And by a great fire ſoon changed my dreſs.

And now I ſuppoſe you may think by this time,
I have teiz'd you enough with my nonſenſe in rhyme:
Before I conclude—my compliments pay
To fat Mrs R——d, and to fair Mrs. C——y;
Remember me too to your neighbour V———e,
Tho' grey as a badger, and old as a weazel;
To Mr. V——h, who leather can tan,
And juſtice M'W——m, that good-natur'd man;
To Johnny the barber, who hobbles about,
And takes the beſt man in the town by the ſnout.
Thus you ſee in good time, without any confuſion,
My letter is brought to a happy concluſion.

TO THE MEMORY OF

Mrs. MARY M'KEAN.

TO yonder new made grave I'll go,
And there indulge my ſwelling grief:
There ſhall the tears of friendſhip flow,
And give my wounded heart relief.

To yonder grave, oh! muſe, repair,
And whilſt I breathe my tender ſighs,
Attune thy plaintive lyre, for there
The lov'd, the loſt *Maria* lies.

Bleſt be the ground where thou art laid;
Let no unhallow'd foot preſume
Upon thy tufted grave to tread;
No hoſtile hand profane thy tomb.

Angelic hoſts aſſembled here,
Shall guard the conſecrated ground;
In robes of radiant light appear,
And ſpread ſeraphic muſic round.

The winds that thro' the midnight gloom,
Wild howling o'er the mountains fly;
Shall ceaſe their rage, when near thy tomb,
And paſs in plaintive murmurs by.

When at the board with feſtive glee,
Gay pleaſures ſocial boſoms chear;
E'en mirth ſhall pauſe to think on thee,
And, thinking, drop a ſilent tear.

With grateful hearts the poor diſtreſt,
Shall to thy grave lamenting go;
Then ſhall thy hand be duly bleſt,
That hand which lov'd to ſoften woe.

Oft when the moon with placid ray
Gleams o'er the dew-beſpangled green,
Here ſhall my ſilent footſteps ſtray,
Here ſhall my penſive form be ſeen.

Thy worth, dear ſaint, ſhall then ariſe
All bright to contemplation's view:
Review thy life with weeping eyes,
And weeping ſtrive to copy you.

Remembrance long ſhall hold thee faſt;
Thy form, thy virtues ne'er ſhall die:
I'll love thee thus whilſt life ſhall laſt,
And bleſs thee with my lateſt ſigh.

THE EPITAPH.

FAIR was her form, ſerene her mind,
Her heart and hopes were fix'd on high:
Her hand beneficent and kind
Oft wip'd the tear from ſorrow's eye.

The ſweets of friendſhip ſoften'd care;
Love, peace, and joy, her ſoul poſſeſt:
Meekneſs perfum'd each riſing pray'r,
And ev'ry riſing pray'r was bleſt.
In heav'n we truſt, her ſainted ſpirit ſings
Glad *Hallelujahs* to the *King of Kings*.

March, 1773.

POLITICAL BALLADS,

WRITTEN IN THE YEAR 1777.

Date Obolum Belliſario.

AS I travell'd o'er the plain,
About the cloſe of day,
I chanc'd to wander in a lane,
A lane of mire and clay.

'Twas there a dirty drab I ſaw,
All ſeated on the ground,
With oaken ſtaff and hat of ſtraw,
And tatters hanging round.

At my approach ſhe heav'd a ſigh,
And due obeiſance paid,
Firſt wip'd a tear from either eye,
Then her petition made.

" A wretch forlorn, kind ſir, you ſee,
" That begs from door to door;
" Oh! ſtop and give for charity,
" A penny to the poor!

Tho'

" Tho' now in tatters I appear,
" Yet know the time hath been,
" When I partook the world's good cheer,
" And better days have ſeen.

Proceed, ſaid I, whilſt I attend
The ſtory of thy woe;
Proceed, and charity ſhall lend
Some help before I go.

" If blooming honours men delight,
" If charms in wealth they ſee,
" My fame once ſoar'd a glorious height,
" And who more rich than me.

" Of ſons and daughters I can boaſt
" A long illuſtrious line;
" Of ſervants could command a hoſt,
" For large domains were mine.

" But George my youngeſt faithleſs boy,
" Hath all my powers o'erthrown;
" And in the very beds of joy
" The ſeeds of ſorrow ſown.

" He thirſting for ſupreme command,
" Contemn'd my wife decrees,
" And with a ſacrilegious hand,
" My deareſt rights did ſeize.

" A magic wand I once poſſeſt,
" A cap aloft it bore;

" Of

" Of all my treaſures this the beſt,
And none I valued more.

" Ruthleſs he broke the ſacred rod,
" The cap he tumbled down;
" Deſtroying thus, what with their blood
" His anceſtors had won.

" An orphan child fell to my care,
" Fair as the morn was ſhe,
" To large poſſeſſions ſhe was heir,
" And friendly ſtill to me.

" But George, my ſon, beheld the maid,
" With fierce laſcivious eye;
" To raviſh her a plan he laid,
" And ſhe was forc'd to fly.

" She's young and will no more depend
" On cruel George or me;
" No longer now my boaſted friend,
" Nor of my family.

" Bad meaſures often end in worſe,
" His fell intent to gain;
" He ſent in rage a mighty force,
" To bring her back again.

" But to defend the injur'd maid,
" Her faithful houſhold came;

In

" In battle ſtrong they ſtood array'd,
" And gain'd immortal fame.

" 'Mongſt theſe a god-like hero roſe
" Wiſe, generous and brave,
" He check'd the frenzy of her foes,
" His arm was ſtrong to ſave.

' So near perfection, that he ſtood
" Upon the bound'ry line,
" Of infinite from finite good,
" Of human from divine.

" Defeated thus in all his ſchemes,
" My fooliſh, wick'd ſon,
" Awak'd from his deluſive dreams,
" And found himſelf undone.

" Mean time I ſuffer'd, in diſgrace,
No comfort could I find,
" I ſaw diſtreſs come on a pace,
" With ruin cloſe behind.

" At length diſtracted quite with grief,
" I left my native home,
" Depending now on chance relief,
" Abroad for bread I roam.

" A ſhield and lance once grac'd theſe hands,
" Perhaps you've heard my fame,

" For

" For I was known in diſtant in lands,
" *Britannia* is my name.

" *Britannia* now in rags you ſee;
" I beg from door to door—
" Oh! give, kind ſire for charity,
" A penny to the poor.

THE BATTLE OF THE KEGS.

GALLANTS attend and hear a friend,
Trill forth harmonious ditty,
Strange things I'll tell which late befel
In Philadelphia city.

'Twas early day, as poets ſay,
Juſt when the ſun was riſing,
A ſoldier ſtood on a log of wood,
And ſaw a thing ſurpriſing.

As in amaze he ſtood to gaze,
The truth can't be denied, ſir,
He ſpied a ſcore of kegs or more
Come floating down the tide, ſir.

A ſailor too in jerkin blue,
This ſtrange appearance viewing,
Firſt damn'd his eyes, in great ſurpriſe,
Then ſaid ſome miſchief's brewing.

Theſe kegs, I'm told, the rebels bold,
Pack'd up like pickling herring;
And they're come down t' attack the town,
In this new way of ferrying.

The ſoldier flew, the ſailor too,
And ſcar'd almoſt to death, ſir,
Wore out their ſhoes, to ſpread the news,
And ran till out of breath, ſir.

Now up and down throughout the town,
Moſt frantic ſcenes were acted;
And ſome ran here, and others there,
Like men almoſt diſtracted.

Some fire cry'd, which ſome denied,
But ſaid the earth had quaked;
And girls and boys, with hideous noiſe,
Ran thro' the ſtreets half naked.

Sir William he, ſnug as a flea,
Lay all this time a ſnoring,
Nor dream'd of harm as he lay warm,
In bed with Mrs. L——g.

Now in a fright, he ſtarts upright,
Awak'd by ſuch a clatter;
He rubs both eyes, and boldly cries,
For God's ſake, what's the matter?

Ariſe

At his bed-ſide he then eſpy'd,
Sir Erſkine at command, ſir,
Upon one foot, he had one boot,
And th' other in his hand, ſir.

" Ariſe, ariſe, ſir Erſkine cries,
" The rebels—more's the pity,
" Without a boat are all afloat,
" And rang'd before the city.

" The motly crew, in veſſels new,
" With Satan for their guide, ſir.
" Pack'd up in bags, or wooden kegs,
" Come driving down the tide, ſir.

" Therefore prepare for bloody war,
" Theſe kegs muſt all be routed,
" Or ſurely we deſpiſed ſhall be,
" And Britiſh courage doubted."

The royal band, now ready ſtand
All rang'd in dread array, ſir,
With ſtomach ſtout to ſee it out,
And make a bloody day, ſir.

The cannons roar from ſhore to ſhore,
The ſmall arms make a rattle;
Since wars began I'm ſure no man
E'er ſaw ſo ſtrange a battle.

The rebel dales, the rebel vales,
With rebel trees ſurrounded;
The diſtant wood, the hills and floods,
With rebel echos ſounded.

The fiſh below ſwam to and fro,
Attack'd from ev'ry quarter;
Why ſure, thought they, the devil's to pay,
'Mongſt folks above the water.

The kegs, 'tis ſaid, tho' ſtrongly made,
Of rebel ſtaves and hoops, ſir,
Could not oppoſe their powerful foes,
The conqu'ring Britiſh troops, ſir.

From morn to night theſe men of might
Diſplay'd amazing courage;
And when the ſun was fairly down,
Retir'd to ſup their porrage.

An hundred men with each a pen,
Or more upon my word, ſir,
It is moſt true would be too few,
Their valour to record, ſir.

Such feats did they perform that day,
Againſt theſe wick'd kegs, ſir,

That

That years to come, if they get home,
They'll make their boaſts and brags, ſir.

N. B. This ballad was occaſioned by a real incident. Certain machines, in the form of kegs, charg'd with gun powder, were ſent down the river to annoy the Britiſh ſhipping then at Philadelphia. The danger of theſe machines being diſcovered, the Britiſh manned the wharfs and ſhipping, and diſcharged their ſmall arms and cannons at every thing they ſaw floating in the river during the ebb tide.

A CAMP

A CAMP BALLAD.

MAKE room, oh! ye kingdoms in hiſt'ry renowned
Whoſe arms have in battle with glory been crown'd,
Make room for America, another great nation,
Ariſes to claim in your council a ſtation.

Her ſons fought for freedom, and by their own brav'ry
Have reſcued themſelves from the ſhackles of ſlav'ry.
America's free, and tho' Britain abhor'd it,
Yet fame a new volume prepares to record it.

Fair freedom in Briton her throne had erected,
But her ſons growing venal, and ſhe diſreſpected;
The goddeſs offended forſook the baſe nation,
And fix'd on our mountains a more honour'd ſtation.

With glory immortal ſhe here ſits enthron'd,
Nor fears the vain vengeance of Britain diſown'd,
Whilſt Waſhington guards her with heroes ſurrounded,
Her foes ſhall with ſhameful defeat be confounded.

To arms then, to arms, 'tis fair freedom invites us ;
The trumpet ſhrill ſounding to battle excites us ;
The banners of virtue unfurl'd, ſhall wave o'er us,
Our hero lead on, and the foe fly before us.

On Heav'n and Waſhington placing reliance,
We'll meet the bold Britton, and bid him defiance:
Our cauſe we'll ſupport, for 'tis juſt and 'tis glorious
When men fight for freedom they muſt be victorious.

THE TOAST.

'TIS Waſhington's health—fill a bumper around,
For he is our glory and pride;
Our arms ſhall in battle with conqueſt be crown'd,
Whilſt virtue and he's on our ſide.

'Tis Waſhington's health—and cannons ſhould roar,
And trumpets the truth ſhould proclaim;
There cannot be found, ſearch the world all o'er,
His equal in virtue and fame.

'Tis Waſhington's health—our hero to bleſs,
May heav'n look graciouſly down:
Oh! long may he live our hearts to poſſeſs,
And freedom ſtill call him her own.

The BIRDS, the BEASTS, and the BAT.

A FABLE.

A WAR broke out in former days,
If all is true that Æſop ſays,
Between the birds that haunt the grove,
And beaſts that wild in foreſts rove:
Of fowl that ſwim in water clear,
Of birds that mount aloft in air;
From ev'ry tribe vaſt numbers came,
To fight for freedom, as for fame:
The beaſts from dens and caverns deep,
From valleys low and mountains ſteep;
In motly ranks determin'd ſtood,
And dreadful howlings ſhook the wood.
The bat, half bird, half beaſt was there,
Nor would for *this* or *that* declare;
Waiting till conqueſt ſhould decide,
Which was the ſtrongeſt, ſafeſt ſide:
Depending on this doubtful form,
To ſcreen him from th' impending ſtorm.

With ſharpen'd beaks and talons long,
With horny ſpurs and pinions ſtrong,
The birds in fierce aſſault, 'tis ſaid,
Amongſt the foe ſuch havoc made,
That panic ſtruck, the beaſts retreat
Rmaz'd, and vict'ry ſeem'd complete.
Th' obſervant bat, with ſqueaking tone,
Cries, *Bravo*, birds the day's our own;
" For now I'm proud to claim a place
" Amongſt your bold aſpiring race;
" With leathern wings I ſkim the air,
" And am a bird tho' clad in hair."

But now the beaſts aſham'd of flight,
With rallied force renew the fight,
With threatening teeth, uplifted paws,
Projecting horns and ſpreading claws,
Enrag'd advance—puſh on the fray,
And claim the honours at the day.

The bat ſtill hov'ring to and fro,
Obſerv'd how things were like to go,
Concludes thoſe beſt who beſt can fight,
And thinks the ſtrongeſt party right;
" Puſh on, quoth he, our's is the day
" We'll chaſe theſe rebel birds away,
" And reign ſupreme—for who but we
" Of earth and air the Lords ſhould be;
" That I'm a beaſt I can make out,
" by reaſons ſtrong beyond a doubt,

" With

" With teeth and fur 'twould be abſurd,
" To call a thing like me a bird ;
" Each ſon and daughter of my houſe,
" Is ſtil'd at leaſt a flying mouſe."

Always uncertain is the fate,
Of war and enterpriſes great :
The beaſts exulting puſh'd too far
Their late advantage in the war ;
Sure of ſucceſs, inſult the foe,
Deſpiſe their ſtrength and careleſs grow ;
The birds not vanquiſh'd, but diſmay'd,
Collect their force, new pow'rs diſplay'd ;
Their chief, the eagle, leads them on,
And with fierce rage the war's begun.
Now in their turn the beaſts muſt yield,
The bloody laurels of the field ;
Routed they fly, diſperſe, divide,
And in their native caverns hide.

Once more the bat with courtly voice,
Hail, noble birds ! " much I rejoice
In your ſucceſs, and come to claim
My ſhare of conqueſt and of fame."
The birds the faithleſs wretch deſpiſe ;
Hence, traitor, hence the eagle cries ;
No more, as you juſt vengeance fear,
Amongſt our honour'd ranks appear.
The bat, diſown'd in ſome old ſhed,
Now ſeeks to hide his exil'd head ;

Nor

Nor dares his leathern wings diſplay,
From riſing morn to ſetting day:
But when the gloomy ſhades of night,
Screens his vile form from every ſight,
Deſpis'd, unnotic'd, flits about;
Then to his dreary cell returns,
And his juſt fate in ſilence mourns.

THE MOST GRACIOUS ADDRESS

OF ADMIRAL COLLIER AND GENERAL TRYON TO THE PEOPLE OF CONNECTICUT.—JULY, 1779.

WHAT can ye hope, rebellious crew,
But vengeance dire to traitors due;
Whilſt you ſupport this inſurrection,
Refuſing to our king ſubjection?
Why ſo ungen'rous, ſo unkind?
Why to your own true int'reſt blind?
'Tis fact—and take it on our word,
If you'll ſubmit to George the Third,
You'll ſurely find it better far
Than carrying on this bloody war:
You'll only be of ſlaves a nation,
From generation to generation:
And what is that, compar'd with all
The miſchiefs which may now befal,
If you unwiſely ſtill perſiſt in
This naughty practice of reſiſting.

Your towns, yourſelves, you can't deny,
Within the graſp of power lie:
And that we can with greateſt eaſe,
Clap paw upon you when we pleaſe.

That

That you've a houſe to put your head in,
Have pots or kettles, beds or bedding,
Is to our great forbearance owing,
And tender mercy ever flowing.
What you, preſumptuous, call your own,
You only have from us on loan;
And if we aſk it back again,
You know reſiſtance would be vain.
Therefore your houſes, goods, and land,
As monuments of mercy ſtand:
But we're in hopes you now begin
To ſee, and ſoon will own your ſin:
The very continent we're told*
Begins to bluſh, tho' late ſo bold;
Conſcious of many heinous crimes,
And therefore would repent by times.
And you, who thus at mercy lie,
Should firſt to our protection fly:
And ſave yourſelves from fell perdition,
The ſure reward of black ſedition.
Would you ſubmit, 'twould be a ſample
For others—and the good example
Might draw in many worthy folks
To poke their necks into our yokes;
And ſo become—oh! bleſſed thing,
The ſlaves of our moſt gracious king.

And now we think it not amiſs
To leave you to reflect on this:

* Vide the orginal addreſs, of which this is in ſubſtance a juſt tranſlation throughout.

Who

And do moſt graciouſly declare,
That we will all thoſe culprits ſpare,
Who ſtay at home in peace and quiet,
Diſclaiming this unnat'ral riot;
We'll ſpare their dwellings—and what more is,
Be kind as Howe to Jerſey tories:
Yet rebels of the military,
Muſt ſtill remain in ſad quandary;
And thoſe who fill departments civil,
Will ſure go headlong to the devil;
Unleſs they will their follies own,
And pardon aſk on marrow-bone.

But do not think, becauſe we're kind,
We may be always of one mind;
And that our goodneſs has no end,
Becauſe as yet we've been your friend:
Should you perverſely ſtill proceed,
We ſhall be very wroth indeed;
And when we're angry—you know what—
Connecticut muſt go to pot.
Too late you'll find yourſelves miſtaken,
And not a man will ſave his bacon:
Therefore beware—you may rely on
The words of *Collier* and of *Tryon*.

IN MEMORY OF

MR. JAMES BREMNER.

SING to his ſhade a ſolemn ſtrain,
Let muſic's notes complain;
Let echo tell from ſhore to ſhore,
The ſwain of Schuylkill is no more.*

AIR.

From Scotia's land he came,
And brought the pleaſing art
To raiſe the ſacred flame
That warms a feeling heart.

The magic pow'rs of ſound,
Obey at his command,
And ſpread ſweet influence round,
Wak'd by his ſkilful hand.

Oh! ſanctify the ground,
The ground where he is laid;
Plant roſes all around,
Nor let thoſe roſes fade.

Let none his tomb paſs by,
Without a gen'rous tear,
Or ſigh—and let that ſigh,
Be like himſelf ſincere.

* He died on the banks of the Schuylkill, Sept. 1780.

SONG I.

I.

COME, fair Roſina, come away,
Long ſince ſtern Winter's ſtorms have ceas'd;
See! Nature, in her beſt array,
Invites us to her rural feaſt:
The ſeaſon ſhall her treaſure ſpread,
Her mellow fruits and harveſts brown,
Her flowers their richeſt odours ſhed,
And ev'ry breeze pour fragrance down.

II.

At noon we'll ſeek the wild wood's ſhade,
And o'er the pathleſs verdure rove;
Or, near a moſſy fountain laid,
Attend the muſic of the grove;
At eve, the ſloping mead invites
'Midſt lowing herds and flocks to ſtray;
Each hour ſhall furniſh new delights,
And love and joy ſhall crown the day.

SONG II.

I.

My love is gone to ſea,
Whilſt I his abſence mourn,
No joy ſhall ſmile on me
Until my love return.
He aſk'd me for his bride,
And many vows he ſwore;
I bluſh'd—and ſoon comply'd,
My heart was his before.

II.

One little month was paſt,
And who ſo bleſt as we?
The ſummons came at laſt,
And Jemmy muſt to ſea.
I ſaw his ſhip ſo gay
Swift fly the wave-worn ſhore;
I wip'd my tears away—
And ſaw his ſhip no more.

III.

When clouds ſhut in the ſky
And ſtorms around me howl;

When

When livid lightnings fly,
And threat'ning thunders roll;
All hopes of reſt are loſt,
No ſlumbers viſit me;
My anxious thoughts are toſt
With Jemmy on the ſea.

SONG III.

I.

BENEATH a weeping willow's ſhade
She ſat and ſang alone;
Her hand upon her heart ſhe laid
And plaintive was her moan.
The mock bird ſat upon a bough
And liſt'ned to her lay,
Then to the diſtant hills he bore
The dulcet notes away.

II.

Fond echo to her ſtrains reply'd,
The winds her ſorrows bore;
Adieu! dear youth—adieu! ſhe cry'd,
I ne'er ſhall ſee thee more.
The mock-bird ſat upon a bough
And liſt'ned to her lay,
Then to the diſtant hills he bore
The dulcet notes away.

SONG IV.

I.

ENRAPTUR'D I gaze when my Delia is by,
And drink the ſweet poiſon of love from her eye;
I feel the ſoft paſſion pervade ev'ry part
And pleaſure unuſual plays round my fond heart.

II.

I hear her ſweet voice, and am charm'd with her ſong—
I think I could hear her ſweet voice all day long;
My ſenſes enchanted, are loſt in delight
When love and ſoft muſic their raptures unite.

III.

Beyond all expreſſion my Delia I love,
My heart is ſo fix'd that it never can rove;
When I ſee her I think tis an angel I ſee,
And the charms of her mind are a heaven to me.

SONG V.

SONG V.

I.

SEE down Maria's blushing cheek
The tears of ſoft compaſſion flow;
Thoſe tears a yielding heart beſpeak—
A heart that feels for others' woe.
May not thoſe drops, that frequent fall,
To my fond hope propitious prove,
The heart that melts at Pity's call
Will own the ſofter voice of love.

II.

Earth ne'er produced a gem ſo rare
Nor wealthy ocean's ample ſpace
So rich a pearl—as that bright tear
That lingers on Maria's face.
So hangs upon the morning roſe
The chryſtal drop of heav'n refin'd,
A while with trembling luſtre glows—
Is gone—and leaves no ſtain behind.

SONG VI.

O'ER the hills far away, at the birth of the morn,
I hear the full tone of the ſweet ſounding horn;
The ſportſmen with ſhoutings all hail the new day
And ſwift run the hounds o'er the hills far away.
Acroſs the deep valley their courſe they purſue
And ruſh thro' the thickets yet ſilver'd with dew;
Nor hedges nor ditches their ſpeed can delay—
Still ſounds the ſweet horn o'er hills far away.

SONG VII.

I.

MY gen'rous heart diſdains
The ſlave of love to be,
I ſcorn his ſervile chains,
And boaſt my liberty.
This whining
And pining
And waſting with care,
Are not to my taſte, be ſhe ever ſo fair.

II.

II.

Shall a girl's capricious frown
Sink my noble ſpirits down?
Shall a face of white and red
Make me droop my ſilly head?
Shall I ſet me down and ſigh
For an eye-brow or an eye?
For a braided lock of hair,
Curſe my fortune and deſpair?
My gen'rous heart diſdains, &c.

III.

Still uncertain is to-morrow,
Not quite certain is to-day—
Shall I waſte my time in ſorrow?
Shall I languiſh life away?
All becauſe a cruel maid,
Hath not Love with Love repaid.
My gen'rous heart diſdains, &c.

SONG VIII.

I.

THE traveller benighted and loſt,
O'er the mountains purſues his lone way;
The ſtream is all candy'd with froſt
And the icicle hangs on the ſpray,
He wanders in hope ſome kind ſhelter to find
'' whilſt thro' the ſharp hawthorn keen blows the cold wind."

II.

II.

The tempeſt howls dreary around
And rends the tall oak in its flight;
Faſt falls the cold ſnow on the ground,
And dark is the gloom of the night.
Lone wanders the trav'ler a ſhelter to find,
"Whilſt thro' the ſharp hawthorn ſtill blows the cold wind."

III.

No comfort the wild woods afford,
No ſhelter the trav'ler can ſee—
Far off are his bed and his board
And his home, where he wiſhes to be.
His hearth's cheerful blaze ſtill engages his mind
"Whilſt thro' the ſharp haw thorn keen blows the cold wind."

N. B. The laſt eight Songs were ſet to Muſic by the Author.

A N

ORATION,

WHICH MIGHT HAVE BEEN DELIVERED

TO THE

STUDENTS IN *ANATOMY*,

ON THE

LATE RUPTURE

BETWEEN

THE TWO SCHOOLS IN THIS CITY.

The ARGUMENT.

ADDRESS—the folly and danger of diſſention—the Orator enumerates the enemies of the fraternity—reminds them of a late unſeaſonable interruption—a night ſcene in the Potter's Field—he laments the want of true zeal in the brotherhood—and boaſts of his own—the force of a ruling paſſion—the earth conſidered as a great animal—the paſſion of love not the ſame in a true ſon of Eſculapius as in other men—his own amour—a picture of his miſtreſs in high taſte—ſhews his learning in the deſcription of her mouth, arm and hand—his miſtreſs dies—his grief—and extraordinary conſolation—his unparallel'd fidelity—he apologizes for giving this hiſtory of his amour—the great difficulties Anatomiſts have to encounter in the preſent times, ariſing from falſe delicacy, prejudice and ignorance—a ſtrong inſtance in proof that it was not ſo formerly—curious argument to prove the inconſiſtency of the preſent opinions reſpecting the practice—he mentions many obſtacles in the road to ſcience—and reproaches them for their inteſtine broils, at a time when not only popular clamour is loud, but even the powers of government are exerted againſt them—he then encourages his brethren with hopes of better times, founded on the eſtabliſhment of the College of Phyſicians—is inſpired with the idea of the future glory of that inſtitution—and propheſies great things.

AN
ORATION,

WHICH MIGHT HAVE BEEN DELIVERED, &c.

FRIENDS and aſſociates! lend a patient ear,
Suſpend inteſtine broils and reaſon hear.
Ye followers of —— your wrath forbear—
Ye ſons of ——— your invectives ſpare;
The fierce diſſention your high minds purſue
Is ſport for others—ruinous to you.

SURELY ſome fatal influenza reigns,
Some epidemic *rabies* turns your brains—
Is this a time for brethren to engage
In public conteſt and in party rage?
Fell diſcord triumphs in your doubtful ſtrife
And, ſmiling, whets her anatomic knife;
Prepar'd to cut our precious limbs away
And leave the bleeding body to decay—

SEEK ye for foes!—alas, my friends, look round,
In ev'ry ſtreet, ſee num'rous foes abound!

Methinks I hear them cry, in varied tones,
" Give us our father's—brother's—ſiſter's bones."
Methinks I ſee a mob of ſailors riſe—
Revenge!—revenge! they cry—and damn their eyes—
Revenge for comrade Jack, whoſe fleſh they ſay,
You minc'd to morſels and then threw away.
Methinks I ſee a black infernal train—
The genuine offspring of accurſed *Cain*—
Fiercely on you their angry looks are bent,
They grin and gibber dangerous diſcontent
And ſeem to ſay—" Is there not meat enough?
" Ah! maſſa cannibal, why eat poor CUFF?"
Ev'n hoſtile watchmen ſtand in ſtrong array
And o'er our heads their threat'ning ſtaves diſplay,
Howl hideous diſcord thro' the noon of night
And ſhake their dreadful lanthorns in our ſight.

SAY, are not theſe ſufficient to engage
Your high wrought ſouls eternal war to wage?
Combine your ſtrength theſe monſters to ſubdue
No friends of ſcience and ſworn foes to you;
On theſe—on theſe your wordy vengeance pour
And ſtrive our fading glory to reſtore.

AH! think how, late, our mutilated rites
And midnight orgies, were by ſudden frights
And loud alarms profan'd—the ſacrifice,
Stretch'd on a board before our eager eyes,
All naked lay—ev'n when our chieftain ſtood
Like a high prieſt, prepar'd for ſhedding blood;
Prepar'd, with wondrous ſkill, to cut or ſlaſh

The

The gentle ſliver or the deep drawn gaſh;
Prepar'd to plunge ev'n elbow deep in gore
Nature and nature's ſecrets to explore—
Then a tumultuous cry—a ſudden fear—
Proclaim'd the foe—th' enraged foe is near—
In ſome dark hole the hard got corſe was laid
And we, in wild concluſion, fled diſmay'd.

THINK how, like brethren, we have ſhar'd the toil
When in the Potter's Field * we ſought for ſpoil,
Did midnight ghoſts and death and horror brave—
To delve for ſcience in the dreary grave.—
Shall I remind you of that awful night
When our compacted band maintain'd the fight
Againſt an armed hoſt?—fierce was the fray
And yet we bore our ſheeted prize away.
Firm on a horſe's back the corſe was laid,
High blowing winds the winding ſheet diſplay'd;
Swift flew the ſteed—but ſtill his burthen bore—
Fear made him fleet, who ne'er was fleet before;
O'er tombs and ſunken graves he cours'd around,
Nor ought reſpected conſecrated ground,
Mean time the battle rag'd—ſo loud the ſtrife,
The dead were almoſt frighten'd into life—
Tho' not victorious, yet we ſcorn'd to yield,
Retook our prize and left the doubtful field.

IN this degenerate age, alas! how few
The paths of ſcience with true zeal purſue?
Some trifling conteſt, ſome deluſive joy
Too oft th' unſteady minds of youth employ.

For

* The Negro Burial ground.

For me—whom Esculapius hath inſpir'd—
I boaſt a ſoul with love of ſcience fir'd;
By one great object is my heart poſſeſt—
One ruling paſſion quite abſorbs the reſt—
In this bright point my hopes and fears unite;
And one purſuit alone can give delight.

To me things are not as to vulgar eyes;
I would all nature's works anatomize—
This world a living monſter ſeems, to me;
Rolling and ſporting in th' aerial ſea;
The ſoil encompaſſes her rocks and ſtones
As fleſh in animals encircles bones.
I ſee vaſt ocean, like a heart in play,
Pant *ſyſtole* and *diaſtole* ev'ry day,
And by unnumber'd *venous* ſtreams ſupply'd
Up her broad rivers force th' *arterial* tide: [ſhew
The world's great lungs, monſoons and trade-winds
From eaſt to weſt, from weſt to eaſt they blow
Alternate reſpiration——
The hills are pimples which earth's face defile;
And burning *Ætna*, an eruptive boil:
On her high mountains *hairy* foreſts grow,
And *downy* graſs o'erſpreads the vales below;
From her vaſt body perſpirations riſe
Condenſe in clouds and float beneath the ſkies:
Thus fancy, faithful ſervant of the heart,
Transforms all nature by her magic art.

Ev'n mighty Love, whoſe pow'r all pow'r controuls,
Is not, in me, like love in other ſouls—

Yet

Yet I have lov'd—and CUPID's ſubtle dart
Hath thro' my *pericardium* pierc'd my heart.
Brown CADAVERA did my ſoul enſnare,
Was all my thought by night and daily care—
I long'd to claſp, in her tranſcendent charms,
A living ſkeleton within my arms.

LONG, lank and lead, my CADAVERA ſtood,
Like the tall pine, the glory of the wood—
Oft times I gaz'd, with learned ſkill to trace
The ſharp edg'd beauties of her bony face—
There roſe *Os frontis* prominent and bold,
In deep ſunk *orbits* two large eye-balls roll'd,
Beneath thoſe eye-balls, two arch'd bones were ſeen
Whereon two flabby cheeks hung looſe and lean;
Between thoſe cheeks, protuberant aroſe,
In form triangular, her lovely noſe,
Like EGYPT's pyramid it ſeem'd to riſe,
Scorn earth, and bid defiance to the ſkies;
Thin were her lips, and of a ſallow hue,
Her open mouth expos'd her teeth to view;
Projecting ſtrong, protuberant and wide
Stood *inciſores*—and on either ſide
The *canine* rang'd, with many a beauteous flaw,
And laſt the *grinders*, to fill up the jaw—
All in their *alveoli* fix'd ſecure,
Articulated by *gomphoſis* ſure.
Around her mouth, perpetual ſmiles had made
Wrinkles wherein the loves and graces play'd;
There, ſtretch'd and rigid by continual ſtrain,
Appear'd the *zygomatic* muſcles plain,

And

And broad *montanus* o'er her peeked chin
Extended to ſupport the heav'nly grin.
In amorous dalliance of I ſtroak'd her arm,
Each riſing muſcle was a riſing charm.
O'er the *flexores* my fond fingers play'd,
I found inſtruction with delight convey'd—
There *carpus*, *cubitus* and *radius* too
Were plainly felt and manifeſt to view.
No muſcles on her love'y hand were ſeen,
But only bones envelop'd by a ſkin.
Long were her fingers and her knuckles bare,
Much like the claw-foot of a walnut chair.
So plain was complex *metacarpus* ſhewn
It might be fairly counted bone by bone.
Her ſlender *phalanxes* were well defin'd,
And each with each by *ginglymus* combin'd.
Such were the charms that did my fancy fire
And love—chaſte ſcientific love inſpire.

At length my Cadavera fell beneath
The fatal ſtroke of all ſubduing death—
Three days in grief—three nights in tears I ſpent,
And ſighs inceſſant gave my ſorrows vent.

Few are th' examples of a love ſo true—
Ev'n from her death I conſolation drew,
And in a ſecret hour approach'd her grave
Reſolv'd her precious corſe from worms to ſave;
With active haſte remov'd the incumbent clay,
Seiz'd the rich prize and bore my love away.

HER naked charms now lay before my ſight,
I gaz'd with rapture and ſupreme delight,
Nor could forbear, in ecſtaſy, to cry—
Beneath that ſhrivell'd ſkin what treaſures lie!
Then feaſted to the full my amorous ſoul,
And ſkinn'd and cut and ſlaſh'd without controul.

'TWAS then I ſaw, what long I'd wiſh'd to ſee,
That heart which panted oft for love and me—
In detail view'd the form I once ador'd,
And nature's hidden myſteries explor'd.

ALAS! too truly did the wiſe man ſay
That fleſh is graſs, and ſubject to decay—
Not ſo the bones—of ſubſtance firm and hard
Long they remain th' anatomiſt's reward.
Wiſe nature, in her providential care,
Did, kindly, bones from vile corruption ſpare,
That ſons their fathers' ſkeletons might have
And heav'n born ſcience triumph o'er the grave.

MY true love's bones I boil'd—from fat and lean
Theſe hands induſtrious ſcrap'd them fair and clean,
And every bone did to its place reſtore,
As nature's hand had placed them long before;
Theſe fingers twiſted ev'ry pliant wire
With patient ſkill, urg'd on by ſtrong deſire.
Now what remains of CADAVERA's mine,
Securely hanging in a caſe of pine.

OFTTIMES I ſit and contemplate her charms,
Her nodding ſkull and her long dangling arms,
'Till quite inflam'd with paſſion for the dead
I take her beauteous ſkeleton to bed—
There ſtretch'd, at length, cloſe to my faithful ſide
She lies all night a lovely grinning bride.—

Excuse, my friends, this detail of my love,
You muſt th' intent, if not the tale approve;
By facts exemplary I meant to ſhew
To what extent a genuine zeal will go.
A mind, ſo fix'd, will not be drawn aſide
By vain diſſentions or a partial pride;
But ev'ry hoſtile ſentiment ſubdue
And keep the ruling paſſion ſtill in view.

False delicacy—prejudices ſtrong,
Which no diſtinctions know 'twixt right and wrong,
Againſt our noble ſcience ſpend their rage
And mark th' ignorance of this vulgar age.

Time was, when men their living fleſh would ſpare
And to the knife their quiv'ring *nates* bare,
That ſkilful ſurgeons noſes might obtain
For noſes loſt—and cut and come again—
But now the *living* churliſhly refuſe
To give their dead relations to our uſe;
Talk of decorum—and a thouſand whims—
Whene'er we hack their wives' or daughters' limbs;
And yet their tables daily they ſupply
With the rich fruits of ſad mortality;
Will pick, and gut and cook a chicken's corſe,
Diſſect and eat it up without remorſe;
Devouring fiſh, fleſh, fowl, whatever comes,
Nor fear the ghoſts of murder'd hecatombs.

Now where's the difference?—to th' impartial eye
A leg of mutton and a human thigh
Are juſt the ſame—for ſurely all muſt own
Fleſh is but fleſh, and bone is only bone;

And

And tho' indeed, ſome fleſh and bone may grow
To make a monkey—ſome to make a beau,
Still the materials are the ſame, we know.
Nor can our anatomic knowledge trace
Internal marks diſtinctive of our race.—

WHENCE, then, theſe loud complaints—theſe hoſts [of foes
Combin'd our uſeful labours to oppoſe?
How long ſhall fooliſh prejudices reign?
And when ſhall reaſon her juſt empire gain?

AH! full of danger is the up-hill road,
That leads the youth to learning's high abode:
His way thick miſts of vulgar errors blind,
And ſneering ſatire follows cloſe behind;
Sour envy ſtrews the rugged path with thorns,
And lazy ignorance his labour ſcorns.

Is this a time, ye brethren of the knife,
For civil conteſt and internal ſtrife?
When loud againſt us gen'ral clamours cry,
And perſecution lifts her laſh on high?
When government—that many headed beaſt—
Againſt our practice rears her horrid creſt,
And, our nocturnal acceſs to oppoſe,
Around the dead a penal barrier * throws?
To cruſh our ſchools her awful pow'r applies,
And ev'n forbids the gibbet's juſt ſupplies. †

YET in this night of darkneſs, ſtorms and fears,
Behold one bright benignant ſtar ‡ appears—

Long

* A law paſt at New-York, making it penal to ſteal bodies from the burial ground.
† *The* wheelbarrow of Pennſylvania.
‡ *The* Medical College.

Long may it ſhine, and, e'er it's courſe is run,
Increaſe, in ſize and ſplendour, to a ſun!—
Methinks I ſee this ſun of future days,
Spread far abroad his *diplomatic* rays—
See life and health ſubmit to his controul,
And like a planet, *death* around him roll.

METHINKS I ſee a ſtately fabric riſe,
Rear'd on the ſkulls of theſe our enemies:
I ſee the bones of our invet'rate foes
Hang round its walls in ſcientific rows.
There ſolemn ſit the learned of the day
Diſpenſing death with uncontrouled ſway,
And by *preſcription* regulate with eaſe
The ſudden criſis or the ſlow diſeaſe.

THEN ſhall phyſicians their millenium find,
And reign the real ſov'reigns of mankind:
Then ſhall the face of this vile world be chang'd—
And nature's healthful laws all new arrang'd—
In min'ral powders all her duſt ſhall riſe,
And all her inſects ſhall be Spaniſh flies:
In medicated potions ſtreams ſhall flow,
Pills fall in hail-ſtorms, and ſharp ſalts in ſnow;
In ev'ry quagmire boluſſes be found,
And ſlimy cataplaſms ſpread the ground—
Nature herſelf aſſume the chymiſt's part,
And furniſh poiſons unſublim'd by art.

THEN to our ſchools ſhall wealth in currents flow,
Our theatres no want of ſubjects know;
Nor laws nor mobs th' Anatomiſt ſhall dread,
For graves ſhall freely render up their dead.

FINIS.

DEC 2 1929